Read

SUPREME COURT OF THE UNITED STATES.

No. 320.

125 BASKETS OF CHAMPAGNE, MARKED V. C., AND 600 BASKETS OF CHAMPANGE, MARKED E. C.

EUGENE CLICQUOT, CLAIMANT, PLAINTIFF IN ERROR

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

819

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2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the tenth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said circuit court, before you, between 1,251 baskets of Champagne, marked "V. C.," and 600 baskets of Champagne, marked "E. C.," Eugene Clicquot, claimant and pl'ff in error, and the United States defendants in error, a manifest error hath happened, to the great damage of the said claimant, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this sixteenth day of October, A. D. 1865, and of the independence of the United States the ninetieth.

[SEAL.] GEO. C. GORHAM,
Clerk U. S. circuit court, tenth circuit, and northern district of California.

The above writ of error is hereby allowed.

OGDEN HOFFMAN, *Dist. Judge.*

Filed October 6, 1865.

GEO. C. GORHAM, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the fourth day of December, A. D. 1865, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the tenth judicial circuit, in and for the northern district of California, wherein Eugene Clicquot, claimant of 125 baskets of Champagne marked "V. C." and 600 baskets of Champagne marked "E. C.," is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., this sixteenth day of October, A. D. 1865, and of the independence of the United States the ninetieth.

OGDEN HOFFMAN, *Dist. Judge.*

Service of a copy of within citation upon me this day hereby admitted.
Dated San Francisco, October 16, 1865.

DELOS LAKE, *U. S. Att'y.*

Filed Oct. 17, 1865.

GEO. C. GORHAM, *Clerk.*

Amended information.

In the United States district court, in and for the northern district of California.

To the Honorable Ogden Hoffman, district judge of the northern district of California:

Be it remembered, that on the seventh day of March, in the year of our Lord eighteen hundred and sixty-four, befour the Hon. Odgen Hoffman, judge as aforesaid, comes in his own proper person William H. Sharp, esq., attorney of the United States for the aforesaid district of California, and in the name and behalf as well of the United States as of Charles James, esq., collector for the port of San Francisco, in said district, and of all other persons concerned, propounds and gives the said judge to understand and be informed that on the seventh day of March, in the year 1864, at San Francisco, in the district of California aforesaid, on land, the said Charles James, esq., collector as aforesaid, did seize the following goods and merchandize, to wit: One hundred and twenty-five baskets of Champagne wine, marked V. C., and six hundred baskets of Champagne wine, marked E. C., and now hath the same in his custody as being forfeited to the United States for the causes hereinafter mentioned, to wit: First, that heretofore, to wit, on the first day of September, A. D. 1863, at Reims, in the empire of France, one J. H. Walther, being one of the owners of said goods and merchandize, (and which goods and merchandize were subject to an ad valorem duty on being imported into the United States,) and designing and intending to import the same into the United States, and to make entry thereof at the port of San Francisco, made and signed an invoice of said goods and merchandize, and before the shipment thereof produced such invoice to the consular agent of the United States nearest the place of shipment, with a declaration endorsed thereon, and signed by said owner, that said invoice contained the actual market value of said goods and merchandize at the time and place when and where the same were procured or manufactured; whereupon, the said consular agent endorsed upon said invoice and declaration a certificate as required by law, and afterwards, to wit, on or about the 2d day of September, A. D. 1863, the said owner shipped the said goods and merchandize at the port of Bordeaux, in the empire of France, consigned to one Alfred Borel, at San Francisco aforesaid, and forwarded to said consignee the said invoice, with the aforesaid declaration endorsed thereon.

That afterwards, and on the 12th day of February, A. D. 1864, the said goods and merchandize were imported into the United States by the owner aforesaid, and arrived at the said port of San Francisco in and by the ship or vessel called the Jean Baut, from a foreign port, to wit, from Bordeaux, in the empire of France. And afterwards, to wit, on or about the day and year last aforesaid, the said Alfred Borel, consignee as aforesaid, of said goods and merchandize, by his attorney in fact, Edward De Rutle, made an entry of the same at the office of the collector of customs of the port of San Francisco aforesaid, and on such entry produced and left with said collector the said invoice so made and produced to said consular agent as aforesaid, with the said declaration of said owner so as aforesaid endorsed thereon, as the true and genuine invoice of said goods and merchandize, and represented that the same and also said declaration endorsed thereon were in all respects true and contained a true and full statement of the actual market value of said goods and merchandize at the time and place when and where the same were procured or manufactured. Whereas in truth and in fact the said invoice so produced as aforesaid by said owner to said consular agent, and the said declaration thereon endorsed, were and are false and fraudulent, and did not state or contain a true and full

statement of the actual market value of said goods and merchandize at the time and place when and where the same were procured or manufactured; but, on the contrary, the said owner well knew that said invoice was false, and that the market value of said goods and merchandize was much greater than the sums and prices stated in said invoice. And the said Alfred Borel, consignee as aforesaid, and the said Edward De Rutle, at the time of presenting said invoice and entering said goods at the said office of the collector of customs as aforesaid, well knew that the said invoice and said declaration were false and fraudulent. And so the attorney for the United States says that the said owner and consignee of said goods and merchandize, and said De Rutle, did knowingly make an
8 entry of said goods and merchandize at the time and place aforesaid, by means of a false invoice and of a false certificate of said consular agent, so fraudulently procured as aforesaid, and of an invoice which did not contain a true statement of all the particulars required by law, and of said false declaration so made before said consular agent and endorsed on said invoice as aforesaid, with a fraudulent design to evade some part of the duties lawfully chargable thereon. Whereby and by reason whereof the said goods and merchandize became and are forfeited to the United States.

Lastly, the said attorney of the United States, on behalf of the said United States, saith that all and singular the premises are true. Wherefore he prays that process in due form of law may issue against said one hundred and twenty-five baskets of Champagne wine marked V. & C., and six hundred baskets of champagne wine marked E. C., to enforce the forfeiture of the said goods and merchandize in the foregoing information mentioned, and requiring notice to be given to all persons concerned in interest to appear and show cause on the
9 return day of the said process why such forfeiture should not be decreed.

DELOS LAKE, *U. S. Att'y.*

Endorsed: Filed July 11, 1865.

GEO. C. GORHAM, *Cl'k,*
By DAN'L T. SULLIVAN, *Deputy.*

Answer to amended information.

10 District court of the United States for the northern district of California.

THE UNITED STATES
vs.
125 BASKETS CHAMPAGNE, WINE marked V. & C., and 600 baskets Champagne, wine marked E. C.

And now comes Eugene Clicquot, claimant of above-named merchandize, and saving and reserving all benefit of exception to the errors, uncertainties, and insufficiencies in the amended information contained, for answer and plea thereto says that the said merchandize in the said amended libel of information mentioned did not, nor did any part thereof, become forfeited in manner and form as in said amended information in this behalf is alleged.

SIDNEY V. SMITH, *Proctor for claimant.*

11 Endorsed: Filed July 19, 1865.

GEORGE C. GORHAM, *Cl'k,*
Pr. DAN'L T. SULLIVAN, *Deputy.*

Service of a copy of the within answer is hereby admitted.

DELOS LAKE, *U. S Att'y.*

San Francisco, July 19, 1865.

Verdict.

12 And now at this day came the jurors sworn and empannelled to try the issues joined between the parties, and being asked if they had agreed upon their verdict, deliver their verdict as follows, to wit :

In the case of the United States, plaintiff, and 125 baskets Champagne V. C., and 600 baskets Champagne E. C., defendant, we, the jurors, find for the plaintiff.

13 (Signed) S. P. TAYLOR, *Foreman.*

Judgment.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the thirty-first day of July, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
125 BASKETS CHAMPAGNE, V. & C., 600 BASKETS Champagne, E. C.

This cause having been regularly brought on for trial before a jury, and the jury after hearing the evidence and allegations having found in favor of
14 the plaintiff, and that the goods, wares, and merchandize mentioned and set forth in the libel of information in this cause are forfeited to the United States for the reasons and causes in said libel set forth :

Now, therefore, it is hereby ordered, adjudged, sentenced, and decreed, and the court doth hereby order, adjudge, sentence, and decree, that the said goods, wares, and merchandize mentioned and set forth in the libel in this cause be and the same are accordingly condemned as forfeited to the United States. And it is further ordered, adjudged, and decreed that a summary judgment be, and the same is hereby, entered against Alfred Borel, principal, Theodore Le Roy and Francis Bertou, sureties, for the sum of thirteen thousand three hundred and thirty-eight $\frac{88}{100}$ dollars, lawful money of the United States, being the amount of the bond and stipulation given to the marshal on the attachment of the said 125 baskets Champagne, V. C., and 600 baskets Champagne, E. & C., and that the said United States have execution to satisfy this judgment.

Entered July 31st, 1865.

GEO. C. GORHAM, *Clerk,*
By DAN'L T. SULLIVAN, *Deputy.*

15 *Bill of exceptions.*

In the district court of the United State, in and for the northern district of California.

UNITED STATES OF AMERICA
vs.
125 BASKETS OF CHAMPAGNE WINE, m'k'd V. C., and 600 baskets of Champagne wine marked E. C., Eugene Clicquot, claimant.

Be it remembered, that the issues in this action came on for trial before the Honorable Ogden Hoffman, judge of said district court, at a stated term thereof, held at the city of San Francisco, State of California, on the 31st day of July, 1865; that a jury was called and sworn, and the plaintiffs, by their
16 counsel, opened the case. The plaintiffs then, to maintain the issues upon their part, proved that the claimant, Eugene Clicquot, was and for many years past had been a manufacturer and dealer in Champagne wines, at the

town of Reims, in the empire of France. That the wines in controversy in this action were manufactured by the claimant, at Reims, and by him consigned to Alfred Borel, at San Francisco, for sale on his (claimant's) account. That said wines were imported to San Francisco via Bordeaux, in the French ship Jean Bart, which ship sailed from Bordeaux on or about the day of September, 1863, and arrived in the port of San Francisco on or about the day of February, 1864. That the claimant, prior to the shipment of the said merchandize, and on the 1st day of September, 1863, made and presented to the U. S. consular agent at Reims, an invoice thereof, a translation of which into the English language is as follows:

17 REIMS, *the 3d August*, 1863.

Mr. Alfred Borel, San Francisco:

Eugene Clicquot sent at his risk and peril through Mess. Tehen Brothers, at Bordeaux, payable at six months.

V. C.

17,846–17,945, 100 baskets, of 12 bottles each, 1,200 bottles, @ 26f, 140fr	1,680
17,946–17,970, 25 baskets, of 24 half bottles each, 7,200 bottles, @ f 70	420
E. C.	
17,971–18,570, 600 baskets, of 12 bottles each, 7,200 bottles, @ f 685 fr	13,320
	15,420

Contained in

8,400 bottles for the glass f 30 p. 100	2,520	
600 bottles for the glass f 25 p	150	
		2,720

Add charges:

725 baskets and packing @ f 2	1,450	
Transportation to Bordeaux @ f 157	1,305	
Shipping charges @ 3 f	261	
		3,016
725 baskets Champagne pr. f		21,106 00

18 And thereupon said claimant made and subscribed upon said invoice a declaration as required by act of Congress of March 3, 1863. And that at the same time said claimant declared that said merchandize was intended for entry at the port of San Francisco, which declaration was duly certified by said U. S. consular agent on the said invoice as required by law. That said claimant forwarded said invoice, with said declaration endorsed thereon, to his agent at San Francisco. That on the 8th day of February, 1864, the agent, Alfred Borel, by Edward De Rutle, his attorney in fact, presented the said invoice at the office of the collector of customs at the port of San Francisco, together with a bill of lading of said goods, and demanded an entry of said goods on said invoices, endorsements, and bills of lading; and thereupon said Edward De
19 Rutle took and subscribed the consignee's oath as required by law on goods not procured by purchase. And thereupon said goods were admitted to be entered, and were entered at the prices stated in said invoice.

The plaintiff then called as a witness Willard B. Farwell, who testified that for four years past he has been, and still is, United States naval officer for the

port of San Francisco; that while such naval officer, and in the year 1864, he left San Francisco and proceeded to France, and visited Paris; that the Champagne wine proceeded against in this action was manufactured at Reims, France; that he, the said Willard B. Farwell, did not visit Reims; that he has never been a manufacturer of or a dealer in Champagne wines, and that he is not an expert as to the price thereof; that his business in Europe was to ascertain the prices of Champagne wines; that he spent about three months in the investigation.

20 The counsel for the plaintiffs propounded to the witness the three following questions:

What did you ascertain, if anything, concerning the price or value of Eugene Clicquot Champagne?

Did you ascertain what was the jobbing or wholesale price at Paris?

What means did you take to ascertain the price or value, and what was the result of your investigation?

To which questions the witness answered as follows:

I went to the agents of Eugene Clicquot, Jean Petit and Fils, whose place of business was No. 7 Rue de la Mechorcher.

They had wines for sale, and stated that they were the agents of Eugene Clicquot, of Reims, for the sale of his wines. They were generally reputed to be such agents, and there was a sign to that effect outside the door. I

21 examined the wines there which they had for sale, and inquired the prices per bottle, and also inquired the wholesale prices for shipment to England and elsewhere. The agent stated to me the different prices.

The defendant's counsel objected to the witness testifying what the said Jean Petit and Fils stated to him in regard to the prices of Champagne as inadmissible and incompetent, on the ground that it was hearsay and that there was no evidence that said Jean Petit and Fils were the agents of said claimant.

The court overruled the objection and the claimant's counsel excepted.

The witness then testified as follows: Said agents stated to me the different prices for the different qualities of Champagne of Eugene Clicquot, for exportation to England; they were as stated in the price current with five per cent. discount. I was informed, however, that I could obtain the wines for ex-

22 portation upon better terms from the manufacturer, at Reims. The highest priced wines which I was shown were put up and labeled precisely like the best quallty of the Eugene Clicquot wines imported into this port,

The witness further testified that the said Jean Petit and Fils, at the same time handed him a printed price-current.

The witness here produced the said price-current, and stated that it was the same furnished and handed him by the said house of Jean Petit and Fils.

The plaintiff's counsel offered the said price-current in evidence, to which the claimant's counsel objected on the ground that such proposed evidence would be hearsay, and irrelevant, and immaterial; that such paper did not purport to state or give the wholesale prices at Paris of the wines therein mentioned, but merely the price of a single bottle; that no actual transactions on the part of said Farwell, or any one else, had been proved, or was proposed to be

23 proved, to have been based on such paper or on the prices therein stated; that said paper had not in any manner been connected with said claimant, and that the wines mentioned and stated in such paper did not appear to be and had not been proved to be of the same kind or quality as those proceeded against in this action.

The court overruled the objection and admitted the said price-current to be read in evidence; to which ruling and decision the claimant's counsel duly excepted.

The said price-current was then read, a translation of which into the English language is as follows:

Champagne wines.

Fine wines of the house of Clicquot, of Reims, Bouzy Mousseax, 1st quality, half dry	Fr. 5 the bottle.
Fine wines of the house of Ellicquot, of Reims, Bouzy Mousseax, 1st quality, very dry	Fr. 5 "
Fine wines of the house of Ellicquot, of Reims, Bouzy Mousseax, 1st quality, sweet	Fr. 5 "
Carte blanche ne plus ultra	Fr. 7 "

Wines marked Jean Petit Fils.

	Di Mosseux, half dry	Fr. 33.50 "
	Sillery Mousseux, half dry	Fr. 4 "
24	Sillery Mousseux, very dry	Fr. 4 "
	Sillery Mousseux, rose colour	Fr. 4 "
	Bouzy et Sillery, dry, not sparkling	Fr. 5 "
	Red wines of Verzeny	Fr. 5 "

Sparkling wines at very low prices for exportation. Return of duties for the outside of Paris, or for foreign ports.

The witness further testified that almost all the leading Champagne manufacturers have agencies in Paris; that he enquired of several agencies for Champagne at wholesale for exportation, and the agents uniformly stated to him their prices; that he could find no agents for Eugene Clicquot at Paris, other than said house of Jean Petit and Fils. That among other wine dealers in Paris was the house No. 6 Provence street, on the outside of which was a sign "E. Delenze Ragot de la Maison Minet Jenne & Co., Reims." That he called at said establishment and was shown by the proprietor examples of various wines, who stated their wholesale prices; that he was also at the same time handed a printed price-current, which he now produces.

25

The plaintiff's counsel offered to read the said price-current in evidence, to which the claimant's counsel objected, on the grounds that such proposed evidence would be hearsay and irrelevant and immaterial, and that such paper did not purport to state or give the wholesale price at Paris of the wines therein mentioned, but merely the price of the single bottle; that no actual transaction on the part of said Farwell or any one else had been proved or was proposed to be proved to have been based on such paper or on the prices therein stated; that said paper had not in any manner been connected with the claimant, and that the wines mentioned and stated in such paper did not appear to be and had not been proved to be of the same kind or quality as those proceeded against in this case.

26

The court overruled the objection and admitted the price current in evidence; to which ruling and decision the claimant's counsel duly excepted.

A translation of which into the English language is as follows:

"E Deleze Rayot, of the firm of Minet June & Co., Reims—Paris, No. 6 Province street.—From 2 to 6 o'clock.

PRICE CURRENT.

Fine Champagne wines.

Carte dor	Fr. 6
Carte blanche	Fr. 5
Choice Bouzy	Fr. 4.50
Excellent Verzenay	Fr. 4.25

Exquisite Sillery	Fr. 4
Partridge's eye	Fr. 3.75
Foaming	Fr. 3.50
Superior Ay	Fr. 3
Extra fine Tisane	Fr. 2.50

27 *Gold Spangled Champagnes.*

Patented S. G. D. D.:

Imperial	Fr. 6
Excellent Bouzy	Fr. 5
Sillery	Fr. 4
Verzenay	Fr. 4
Ay	Fr. 3

Price at Reims, package included.

It was further proved by the deposition of Eugene Clicquot, the claimant, that the firm of Jean Petit et Fils, at Paris, was the agent for the sale of the Champagne manufactured by said Eugene Clicquot.

Other evidence was given on the part of the respective parties; but there was no evidence tending to prove that said Farwell had made any purchase of Champagne wine while in France. And the counsel for plaintiff also asked the said Farwell, at said trial, the following question:

28 Did you, upon enquiry at Paris, ascertain the difference in price between Reims and Paris, as to Mumm Champagne, and as to Maet and Chandon Champagne?

Whereupon the counsel for claimant did then and there, at the said trial, and before the said question was answered by the witness, Farwell, object to the said question, as calling for irrelevant and immaterial testimony, also as calling for hearsay testimony; also because it referred to Champagne wines different in kind, price, and quality from those wines proceeded against in this action.

And the said district judge did then and there, at the said trial, and before the said Farwell had answered said last question, give his opinion and decide that the said question was proper, and should be answered by said Farwell.

29 And thereupon the counsel for said claimant did then and there, at the said trial, and before the said Farwell had answered said last question, except to the said ruling and decision of said district judge, and the said Farwell then answered said question, and testified before said court and jury what he was informed by some of the wine dealers of Paris, France, concerning the difference in price between Reims and Paris, as to "Mumm" Champagne and as to Moet and Chandon Champagne.

And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury therein the following instruction, to wit:

1st. That any valuation set by the claimant on his wine, or any offier by him to sell his wines at a price fixed by him, is not evidence of the fair market value, or of the usual buying and selling price of his wines, unless the jury, from the evidence, be satisfied that the claimant was in the habit, at the

30 place of manufacture, of selling his wines at such valuation or price.

Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed the jury that such offer was evidence, but not conclusive; that an isolated offer to sell had no great weight, but if corroborated by other testimony and in the absence of any evidence of sales or offers to sell at a lower figure, it was worthy of consideration by the jury. And thereupon, the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and the decision of said district judge.

And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury
31 therein the following other instruction, to wit:

2d. That the market value at the city of Paris, in France, of wines manufactured by the claimant, is not to be taken by the jury as the fair market value of the wines in controversy in this case, unless the jury shall believe that these wines were manufactured in Paris.

Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed the jury that though the value required to be stated in the invoice was the market value at Reims, yet the market value at Paris, if established by the evidence was a fact which might be considered as tending to show the market value at Reims. And thereupon the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge.

And after the testimony in said cause was closed, and before its sub-
32 mission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit:

That the law only punishes by forfeiture the attempt to defraud the revenue or evade the duties, and therefore if the jury shall believe that the claimant in this case has made up his invoice of the wines in controversy through a doubt of the requirements of the law or of its meaning, and not with a fraudulent design, their verdict must be for the claimant.

Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth. And thereupon, the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge.

And after the testimony in said cause was closed, and before its sub-
33 mission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit:

That the invoice in this case having been made out on the 5th day of September, 1863, and the wine mentioned therein having been shipped from Bordeaux in the year 1863, therefore the act of Congress passed on the 3d day of March, 1863, is not applicable to such invoice or to the goods mentioned therein, even though the goods arrived at the port of San Francisco in February, 1864.

Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, on the ground that it was an incorrect instruction. And thereupoo, the counsel for claimant, did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge.

And after the testimony in said cause was closed, and before its sub-
34 mission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit:

That if there was not an actual market value, that is, wholesale market value, for manufactured Champagne at Rheims, at the time the invoice of the goods in question was made out, than the claimant Eugene Clicquot was justified in expressing in said invoice the value of these goods at their actual costs to the manufacturer. Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth. And thereupon, the counsel for claimant, did then and there at the said trial, except to the said last-mentioned ruling and decision of said district judge.

And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury
35 therein the following other instruction, to wit: That the jury cannot find these wines should be forfeited, as undervalued in the invoice, unless they are satisfied that the claimant Eugene Clicquot, in valuing said wines in the invoice fraudulently undervalued them. Which instruction said district

judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth.

And thereupon the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge. And after the testimony in said cause was closed and before its submission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit: That if Alfred Borel was the consignee
36 or agent of the Champagne wine proceeded against in this suit, and entered the same at the San Francisco custom-house, upon the invoice presented here by the plaintiffs, then the goods in question cannot be forfeited unless you are satisfied that said Alfred Borel made or caused to be made said entry, knowing or believing said invoice to be false. Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth.

And thereupon, the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge. And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit:

That if Edward De Rutle acted as the attorney and agent of Alfred Borel in entering the Champagne wine proceeded against in this suit, at the San
37 Francisco custom-house, upon the invoice presented here by the plaintiffs, then the goods in question cannot be forfeited unless you are satisfied that said Edward De Rutle made said entry, knowing or believing said invoice to be false. Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth. And thereupon the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge. And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit:

That that section of the act of Congress of March 2d, 1799, which provides that where probable cause is shown for the prosecution, the *onus probandi* shall lie on the claimant has no application to this cause. Which instruction said district judge did then and there, at said trial, refuse to give to the jury, but
38 instructed them as is hereinafter set forth. And thereupon the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge. And after the testimony in said cause was closed, and before its submission to the jury, the counsel for said claimant asked the court to give the jury therein the following other instruction, to wit: That the word *knowingly* in the first section of the act of March 3d, 1863, means in connection with the language which accompanies and surrounds it, *fraudulently*. Which instruction said district judge did then and there, at the said trial, refuse to give to the jury, but instructed them as is hereinafter set forth. And thereupon the counsel for claimant did then and there, at the said trial, except to the said last-mentioned ruling and decision of said district judge. The district judge thereupon charged the jury as follows:

39 GENTLEMEN OF THE JURY: You will perceive that this case is one of more than ordinary importance. On one side it is alleged that the object of the prosecution is not only to punish the particular fraud complained of, but to expose and break up an extensive combination in a foreign country, where artifices and operations are preying upon our revenue, crippling our domestic industry, and driving our honest traders out of the market. On the other side it is alleged not only that the goods involved in this case were invoiced at their true value to the owner, but that the system of valuation adopt-

ed has been just and fair, and is under the circumstances in entire con-
40 formity with the law. This case, therefore, involves the enquiry as to the basis or theory on which ad valorem duties are to be estimated, in all cases, upon Champagne wines.

The law of 1863, under which you are proceeding, in effect punishes the entry of goods at the custom-house, or the attempt to enter them, by means of an invoice which shall not contain a true statement of the actual market value of the goods. It is alleged here on the part of the plaintiff, that this invoice did not contain a true statement of the market value of the goods, and on the side of the claimants it is alleged that it did. The inquiry therefore presents itself: What is the market value of goods? What is the "actual market value," in the sense of that statute?

41 And before answering that question in terms it is well to look at the course of previous legislation. I may observe, in the first place, that obviously it must be in the highest degree desirable that a system of revenue laws for the collection of duties ad valorem should be as far as may be uniform in its operation, and that no invidious discrimination should be made between goods obtained by purchase, and the goods of a producer or manufacturer. By the law of Congress of 1799 ad valorem duties were required to be estimated upon the cost of goods. This rule, when applied to the case of a purchaser, appeared to, and in all ordinary cases did, give a very fair indication of the market
42 value, for the purchaser is presumed to have purchased at the ordinary prices, at the ruling rates, and the prices actually paid by him it was supposed would in the majority of cases be equivalent, or nearly equivalent, to the actual market value. But when the same rule and mode of computation were applied to the manufacturer, and he was permitted to invoice his goods at the actual cost, the amount which they had cost him to produce the invoice value would necessarily be less than the market value or price, the price at which he would sell to purchasers. By the law of 1818 this inequality or want of uniformity was removed, and by that act, continued by subsequent
43 legislation, and in force up to this time, the manufacturer, or he who obtains the goods otherwise than by purchase, was required to invoice them at the actual market value.

You will perceive that such a statute was necessary, for a moment's reflection must convince you that if the manufacturer is allowed to invoice his goods at the actual cost to himself, he will in all cases be enabled to invoice them at a much less value than any purchaser could who might have obtained the same or similar goods in the market. You will therefore observe that the legislation of Congress—the later legislation—has absolutely refused to allow the manufacturer, or him who obtains goods otherwise than by purchase, to
44 invoice such goods at their cost. They are in all cases required to invoice them at the actual, the real market value.

Under these statutes, and it is presumed with a full knowledge of them, these claimants, or the consignor of the goods in this case, has invoiced his goods. He has declared to the consul that he has invoiced them at their actual market value. The question now arises before you: Has he invoiced them at their actual market value, or has he invoiced them at a price far below their market value?

The market value of goods is the price at which the owner of the goods, or the producer, holds them for sale; the price at which they are freely offered in the market to all the world; such prices as dealers in the goods are
45 willing to receive, and purchasers are made to pay, when the goods are bought and sold in the ordinary course of trade.

That is, as nearly as I can define it, the market value, or the actual value of goods, as contemplated in that statute. I am not aware that any definition of mine is necessary to explain to you words, the popular meaning of which pre-

cisely corresponds with their legal signification. You yourselves without assistance from me, being men of business, can tell; you must be able to know and to form a correct and definite idea of what, in a statute of this kind, passed under such circumstances, the Congress of the United States meant by the actual or real market value of goods. You will perceive, therefore, that that actual market value of goods is the value on which duties are to
46 be computed, and that the actual cost of the goods is not the standard. On the contrary, that having been the standard, the law has been changed, and for the standard of the cost has been substituted another standard, to wit, the actual market value.

The United States claim that they have shown that the actual market value of these goods is much greater than the prices at which they are invoiced.

The defence claim, at least in their depositions, so far as I have been able to understand them, that the law is complied with if the goods are invoiced at their cost. The estimates of the cost of production are given, and the amount at which they are invoiced is within a fraction of the actual cost of the production of the goods. It is urged by the counsel for the claimants
47 that the actual cost constitutes and must be taken as the market value, the actual market value of the goods; because, he says, no sales of these goods are made at Reims, where the goods are produced. But the depositions presented by the defence, so far as I have been able to gather, solely refer to the actual cost of production; and the witnesses defend and vindicate the propriety, under the circumstances of this case, of taking the actual cost of production, and that alone is the market value.

The defendant claims that there is no actual market value at Reims, the place where the goods are produced, as determined by sales; and that the only way to arrive at the market value, is to take the cost of production, to compute how much the manufacturer has actually disbursed in producing the
48 goods, and you have the actual market value. The United States, however, maintain that though the manufacturer of these goods may not ordinarily sell them for consumption at Reims, and though there may be no persons at that place who buy the goods for the purpose of disposing of them at that place, yet they are freely offered to all the world, and held at known and established rates; that they are sold by the manufacturers to any one who may apply by letters addressed to them or their agents throughout Europe, and can be obtained, and only be obtained, at certain fixed rates at which they are held by the producers of the goods, and at which they
49 are ready to furnish them to all the world. If this latter state of facts be true, then it is evident that the prices at which the producers so hold them are the market prices, within the meaning of the statute, under any rational interpretation which can be given to it.

It will at first sight strike you as extraordinary that an article of this kind, entering so largely into the consumption of mankind, an article which is consumed in great quantities by perhaps every civilized nation on the face of the globe, the value of the annual production of which is from five to ten millions of dollars, which is produced exclusively in a small district in France, the production being confined chiefly to a few towns in that district, where the
50 manufacturers reside—it will at first strike you, I say, as very singular, if it be true, that such an article has no market value. I leave for you, gentlemen, to consider, without now adverting to any of the evidence in the case, how far it is probable that an article of that description can in any just sense be said to have no market value. If it is not worthless, if it has a value, what is it? Has it really no market value? Are there no transactions in it? Do, or do not, the producers sell it in such quantities and at such rates as, when known, determine its market value? And are we driven in this case to com-

pute the cost of production simply, and add a conjectural allowance
51 for a mercantile profit, and take the amount so obtained as the equivalent of, or a substitute for the market value?

The United States, assuming the affirmative, have sought to establish the fact that there are sales of these goods, that they are offered to all the world, that the producers are willing to sell them at determined and fixed rates, well known to all. They have sought to establish this by evidence of several kinds, the first, and I presume that most relied on, are the letters of the claimant offering to sell his goods to various persons. These letters appear to be written in reply to an application for a sale. You have heard them read, and they seem to indicate at what price the claimant holds his goods, and on what terms
52 he is willing to sell them. The letters to which they reply are not produced, and I am asked to charge you to consider that circumstance. You may consider it, and assign to it such weight as you think it deserves; of course, the value as proof of these offers on the part of Mr. Clicquot to sell his wines, and of the indication of his prices conveyed in these letters, will depend upon whether or not, you are satisfied that the offer was made by him in good faith, and that it was for a considerable quantity of the goods. From the intrinsic contents of the letters you can estimate for yourselves whether there is any reasonable ground to doubt that in making these offers or in communicating the prices to the supposed purchaser, his correspondent, he was or was
53 not aware that the order was for any considerable quantity, and that the wine was intended for exportation. Such deductions as in candor and conscience you feel at liberty to make from the force and effect of the letters of Mr. Clicquot, indicating his prices and avowing his willingness to sell and deliver the goods, you will of course make. And you are also to estimate what is the force of the fact that the owner himself of these very goods, in reply to the supposed purchaser states his price, and avows his readiness to sell and deliver these goods; how far this is compatible with the assertion made, or the position taken, on the part of the claimant, that there is really no market
54 value to these goods.

The United States have also offered in evidence various prices current. These were obtained, I understand, from dealers in wines in Paris. Of course, gentlemen, if you believe that these merely indicate the retail prices of some grocer or of some lager beer saloon, of some one who sells wine by the bottle, or the half bottle, or the drink, or even two or three bottles, they will be but slight guides to you in estimating the market value of wines at wholesale. On the other hand, if they appear to be statements of the prices at which wines are held by dealers in Paris, a city which is within a few hours of Reims, the place of production, and in some instances, if it be so, by the agents of these
55 manufacturers themselves, then they do throw light on the market value of wines. I do not see how it can be otherwise. If the place of manufacturers, the place where the manufacturers congregated, were at San Jose, surely the prices offered here at San Francisco for wines, or the prices demanded here, as indicated by the prices current, would be some guide to a candid man as to the market value of the goods at San Jose. I am unable to see why the testimony should be rejected. It is before you for your consideration, and I say again, that if you are satisfied it shows only the price of wine at retail, at small cabarets or drinking shops, it can afford but little assistance to us in determining the market value; but if, on the contrary, it discloses the prices asked by agents, who deliver or offer to deliver the goods at Paris, or at Reims, or who
56 transmit orders to their principals there, then it is like an offer by the principal himself. It is, as nearly as one can get at it, the price which the manufacturer himself demands, if it is the price which his agent asks, and offers to deliver the wine for, at Reims or at Paris.

The United States have also appealed, and so have the counsel for the claimant to the prices which have been obtained for these particular wines in this country, during a course of transactions extending over a period of twelve or fifteen years.

With regard to the question, as to whether, in the absence of any market value, strictly so called, the jury or the court would be justified in saying that the statute was complied with by allowing the producer to estimate the cost, and then a mercantile profit, I conceive it hardly necessary to charge you. The question is of an abstract character, not involved or raised in this case.
57 I have looked in vain, and in this your own recollection will either corroborate me or set me right, for any statement in the depositions of a mercantile profit, or an estimate of it. I repeat, that I have not discovered in this testimony, anywhere, any design on the part of these gentlemen who testified abroad, and who maintain the rightfulness of the mode of valuation adopted in this case, any computation of or allowance for a mercantile profit to be added to the cost of production, to obtain that market value. They aver that there is no market value of these wines at Reims, and no mode of estimating or getting at the market value, or of complying with the statute, or of arriving at any substitute for the market value, except by computing the actual cost. I have not seen anywhere in their testimony in addition of twenty or twenty-five
58 per cent., or of any sum whatever as the profit of the manufacturer of these articles. No allowance of any sum whatever, over and above the cost, is made to represent the profits which the name and reputation of the brands, and the vast capital engaged in the business, and the fact that from the nature of the case these manufacturers have essentially the monoply of the Champagne market all over the world, would necessarily enable them to realize

On the part of the claimant, a large number of witnesses, most respectable, apparently, from their official positions, have testified that there is no market value for this wine at Reims. It is for you to say whether they are not totally mistaken, or if they be not wholly mistaken, whether their mistake has not arisen from a misconception of what is the market value of wines. It is for you to say whether they mean anything more than that the manufacturers do not, at Reims, deal in each other's wines. The statement made by them that there is no
59 market value for Champagne at Reims, must be taken by you with the explanations and qualifications with which it is given. It must be taken in connection with the rest of their evidence, showing in what sense they mean to say that there is no market value for these wines in the Champagne district. It must be taken also in connection with the testimony offered by the United States, to show that there *is* a market value for these wines—that is to say, that these wines are held at and can be obtained by anybody for certain determinate rates, below which they cannot be obtained, and which prices are much higher than are declared in this invoice.

With regard to the question of intent, I am asked to charge you that you should be convinced that these goods, if invoiced below their market value, were invoiced fraudulently below their market value. The previous statutes
60 passed by Congress had introduced in many instances the word "fraudulently," had defined the offence to be, making a false invoice "with intent to defraud" the revenue or evade the payment of duties. This statute, apparently *ex industria*, omits these expressions, and substitutes the words "if the owner," etc., "shall knowingly make an entry by means of any false invoice," etc. I do not feel at liberty, when the legislature has left out the word "fraudulent" and inserted the word "knowingly," to reinstate the word "fraudulent." At the same time, I am bound to say that I cannot conceive any case where an entry could be knowingly made by means of a false invoice unless it were fraudulently made. I do not tell you in terms that you are obliged to
61 find that the entry was made fraudulently, but you are obliged to find

that it was made knowingly by means of a false invoice, and for myself I cannot imagine any case where it could be knowingly done without being fraudulently done. What, then, shall we understand by this word "knowingly" as here employed? It is that in making out this invoice, and in swearing before the consul that such was the actual market value of the goods, the claimant knew better, and that he was swearing falsely. He forfeits these goods if you believe that he knew this invoice did not express their market value—their actual market value.

I think that I have referred in the course of my observations, somewhat desultory as they have been, to every point that is necessary for me to touch upon. By the legislation of the United States, it is established that in revenue cases where the government has shown probable cause, the *onus probandi*, or
62 burden of proof, is on the part of the claimants to prove the facts necessary to be shown in their defence. Under that rule of law, or rather provision of the statute, I am bound, at the request of the district attorney, to say that, in my opinion, the United States has proved probable cause, and it is for you to say whether the claimants themselves have made out their defence; whether they have shown that the goods were invoiced at their real market value at Reims. I am not aware that I have omitted anything to which my attention has been called, and in relation to which I desire to charge in other terms than I have already done. Any instruction that has been asked for and not given, or which has been departed from in terms, the counsel on either side may consider as refused.

In conclusion I invite your serious attention to this case. It is important, as must have already appeared to you, in that it involves a considerable
63 amount of property, and it may affect, more or less, many other cases. It is desirable, of course, that the laws of the United States should be vigorously and properly executed; it is also desirable that no injustice should be done to any foreigner, or any person engaged in commercial transactions among us. I invite your attention to this case as one of moment, and as such you will consider it. To you is committed a grave and important duty which I hope you will discharge with a full sense of your responsibilities.

To that part of the charge of the court to the jury, instructing them that plaintiffs having shown a probable cause, the burden of proof then devolves upon the claimant, the counsel for claimant then and there excepted. And because the aforesaid exceptions, so taken and made by the counsel of said
64 claimant to each and every of the said rulings and decisions of the said district judge, do not appear upon the record of the said trial, therefore on the prayer of the said Eugene Clicquot, the claimant herein, by his counsel, the said district judge hath to this bill of exceptions set his seal pending the said trial, and on this thirty-first day of July, A. D. 1865.

[SEAL.] OGDEN HOFFMAN,
District Judge.

Marked: Filed July 29, 1865.

GEO. C. GORHAM, *Clerk.*

65 *Writ of error to district court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said district court before you, between the United States of America, and 125 baskets of Champagne wine, marked V. C., and 600 baskets of Champagne wine, marked E. C., Eugene Clicquot, claimant, a

manifest error hath happened, to the great damage of the said claimant, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the tenth judicial circuit, in and for the northern district of California, together with this writ, so that you have the same at San Francisco, in the said northern district, on the first Monday of October next, in the said
66 circuit court, to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

GEO. C. GORHAM, *Cl'k*,
By DAN'L T. SULLIVAN, *Dp'ty.*

Endorsed: The within writ of error allowed.
OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: The return to the foregoing writ appears by the schedule hereto annexed.

GEO. C. GORHAM, *Cl'k*,
By DAN'L T. SULLIVAN, *Deputy.*

Endorsed: Filed Aug. 11, 1865.
GEO. C. GORHAM, *Cl'k*,
By DAN'L T. SULLIVAN, *Deputy.*

67 UNITED STATES OF AMERICA,
Northern District of California, ss:

I, George C. Gorham, clerk of the circuit court of United States for the northern district of California, and ex-officio clerk of the district court of the United States, northern district aforesaid, do hereby certify that the papers annexed to this certificate, numbering seventy-eight pages, contain a full, true, and correct transcript of the record in case of the United States *vs.* 125 baskets of Champagne, marked V. C., and 600 baskets of Champagne, marked E. C., made and certified to the circuit court of the United States, northern district of California, in obedience to writ of error hereto attached.

In witness whereof, I have hereto placed my hand and affixed the seal of said district court this thirteenth day of September, A. D. 1865.

[SEAL.] GEORGE C. GORHAM, *Clerk*,
By DAN'L T. SULLIVAN, *Deputy.*

68 *Judgment of circuit court.*

Circuit court of the United States, northern district of California.

125 BASKETS CHAMPAGNE, V. AND C., 600 baskets Champagne, E. C., plaintiff in error,
vs.
THE UNITED STATES, def'ts in error.
} District court.—No. 181.

This case came on to be heard at the June term, 1865, of this court, and after hearing counsel for the respective parties, it was ordered *pro forma* that judgment be entered affirming the judgment of the district court herein.

Wherefore, by reason of the law and of the premises, it is ordered, adjudged, and decreed that the judgment of the district court of the United States in and for the northern district of California be, and the same is hereby, in all
69 respects affirmed; and it is further ordered, adjudged, and decreed that the said goods, wares, and merchandize mentioned and set forth in the libel in this cause be, and the same are accordingly, condemned as forfeited to the United States; and it is further ordered, adjudged, and decreed that a summary judgment be, and the same is hereby, entered against Alfred Borel, principal, Theodore Le Roy, and Francis Burton, sureties, for the sum of thirteen thousand three hundred and thirty-eight dollars, lawful money of the United States, being the amount of the bond and stipulation given to the marshal on the attachment of the said 125 baskets Champagne, V. C., and 600 baskets Champagne, E. and C., and that the said United States have execution to satisfy this judgment.

Entered this 13th day of October, A. D 1865.

GEO. C. GORHAM, *Clerk.*

70 *Certificate of clerk of the circuit court.*

UNITED STATES OF AMERICA,
Northern District of California:

I, George C. Gorham, clerk of the United States circuit court in and for the northern district of California, do hereby certify that the papers annexed to this certificate, numbering sixty-six pages, contain a full, true, and correct transcript of the record in the case therein named, made and certified to the Supreme Court of the United States, in obedience to the writ of error hereto attached.

In witness whereof, I hereto affix my hand and the seal of the said court this 16th day of October, A. D. 1865.

GEO. C. GORHAM, *Clerk.*

Filed December 4, 1865.

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Supreme Court of the U. S.

THE UNITED STATES, DEFENDANTS IN ERROR,

vs.

125 BASKETS OF CHAMPAGNE, MARKED V. C., AND 600 BASKETS OF CHAMPAGNE, MARKED E. C., EUGENE CLIQUOT, CLAIMANT, PLAINTIFFS IN ERROR.

Brief and Statement of Facts and Points of Law for the Plaintiffs in Error.

D. B. EATON, *Of Counsel for Plaintiffs in Error.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.

1866.

643

Supreme Court of the U. S.

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1865.

Supreme Court of the United States.

THE UNITED STATES, Def'ts in Error,

vs.

125 BASKETS OF CHAMPAGNE, marked V. C., and 600 BASKETS OF CHAMPAGNE, marked E. C., EUGENE CLIQUOT, Claimant, Pl'ffs in Error.

BRIEF AND STATEMENT OF FACTS AND POINTS OF LAW FOR THE PLAINTIFFS IN ERROR.

This case originated in a seizure by the Collector of the Port of San Francisco, on the 7th day of March, 1864, of two lots of champagne, the one containing 125 baskets, and the other 600 baskets.

The information filed against the same by the District Attorney of the Northern District of California recites the seizure and prays judgment of forfeiture. (Fols. 2 to 9.)

The information also asserts the following:

(1.) That on or about the first day of September, 1863, "one J. H. Walther, being one of the owners of said "goods and merchandise," and intending to import the same into the United States, made and signed an invoice of the same, and produced the same "to the Consular Agent of the United States," &c., "with a declaration endorsed thereon, and signed "by the said owner, that "said invoice *contained the actual market value* of said

"goods and merchandise, *at the time and place when and* "*where the same were procured or manufactured*," and "that the Consular Agent then endorsed the certificate "required by law. (Fol. 5.)

(2.) That afterwards said owner shipped said merchandise at the port of Bordeaux, in France, "consigned to one Alfred Borel, at San Francisco aforesaid," &c.

(3.) That afterwards, and about the 12th February, 1864, "said goods and merchandise were imported into "the United States by the owner *aforesaid*," &c.; that they arrived in San Francisco by the Jean Bort, from Bordeaux. (Fol. 6.)

(4.) That afterwards, "said Alfred Borel, consignee, *by* "*his attorney in fact*," Edward De Rutle, &c., "made an "entry of the same, at the office of the Collector of Cus- "toms of the port of San Francisco aforesaid, and on such "entry produced and left with said Collector the said in- "voice so made and produced to said Consular Agent, with "the said declaration of said owner, so as aforesaid endorsed "thereon, as the true and genuine invoice of said goods "and merchandise, and represented that the same, and "also said declaration endorsed thereon, were in all re- "spects true, and contained a true and full statement of "the actual market value of said goods and merchandise, "*at the time and place when and where the same were* "*procured or manufactured*." (Fols. 7 and 8.)

(5.) "That in truth and fact, the said invoice," &c., "and declaration," &c., "were and are false and fraudu- "lent, and did not state or contain a true and full state- "ment of the *actual market value* of said goods and mer- "chandise, *at the time and place when and where the same* "*were procured or manufactured*, but, on the contrary, "*said owner* well knew that said invoice was false, and "that the market value of said goods and merchandise "was much greater than the sums and prices stated in "said invoice." (Fol. 8.)

(6.) That said Alfred Borel, &c., and said Edward De

Rutle, &c., "well knew that said invoice and said declaration were false and fradulent." (Fols. 7 and 8.)

(7.) Then the information charges that "said owner and consignee," &c., and "said De Rutle did *knowingly* make an entry of said goods," &c., "by means of a false invoice and a false certificate," &c., "so fraudulently procured," &c., "and of an invoice that did not contain a true statement," &c., "and of said false declaration," &c., "with a fraudulent design to evade some part of the duties lawfully chargeable thereon." (Fols. 8 and 9.)

Therefore, it is alleged that the goods are forfeited to the United States, &c., and process was prayed against parties in interest to appear, &c.

Eugene Cliquot, having appeared as claimant, put in an answer pleading the general issue, reserving exceptions, &c., to the libel. (Fol. 10.)

The case was tried in the District Court, before Judge Hoffman and a jury, and the verdict of the jury was that, "we, the jurors, find for the plaintiff." (Fol. 12.)

Judgment was entered on the verdict, July 21st, 1865, by which the champagne was declared "condemned and forfeited to the United States," &c., and a "summary judgment" was entered against said Alfred Borel, principal, and others, as sureties, for $13,338 88, "being the amount of bond and stipulation given to the marshal," &c., and that the United States have execution, &c. Fol. 14.)

The case was carried, by writ of error, to the Circuit Court, where the judgment of the District Court was, in all respects, affirmed. (Fols. 68 and 69.)

From the Circuit Court the case has been brought to this court by writ of error sued out by the claimant. Fol. 2.)

The Bill of Exceptions appears from fols. 15 to 65.

It is therein stated:

(1.) That the claimant, Eugene Cliquot, was, and had been for years, a manufacturer and dealer in champagne, at Rheims, in France, and that the wines in controversy were made by him at that place, (it does not appear *when*,) and were consigned by him to his agent, Alfred Borel, at San Francisco, for sale on claimant's account, and that said wines came *via* Bordeaux, and from that port, in a French vessel, in September, 1863, and arrived in San Francisco in February, 1864. (Fols. 15 and 16.)

(2.) That said claimant, prior to shipping the wines, and on the first September, 1863, made and presented to the United States Consular Agent at Rheims, an invoice thereof, dated Rheims, August 3, 1863, of which a translation appears at fol. 17.

It will be seen that the value of the bottles and the expense for baskets, packing, shipping, and of transportation to Bordeaux, are added to the value of the wine. (Fol. 17.)

And the wine was sent *at the risk* of the claimant. (Fol. 17.)

And at the time of making the invoice the claimant made and subscribed the oath required by the act of Congress of March 3d, 1863, and at the same time declared that the wine was designed for entry at the port of San Francisco, and said invoice and declaration thereon were forwarded to the claimant's consignee at San Francisco. (Fol. 18.)

(3.) That "on the 9th February, 1864, said agent, "Alfred Borel, by Edward De Rutle, his attorney in "fact, presented said invoice at the office of the Collec- "tor of Customs of San Francisco," and together with a bill of lading of said goods, and demanded an entry, &c., "and thereupon said De Rutle took and subscribed the "consignee's oath," &c., and said goods were entered at "the prices stated in said invoice." (Fols. 18 and 19.)

(4.) The plaintiff below then called W. B. Farwell as

a witness, who stated that he was the United States Naval Officer at San Francisco; that, as such, he visited Paris in the year 1864, *but not Rheims at any time*, and that he is not a manufacturer of, or dealer in, champagne, nor an *expert* as to the price thereof; and that he remained in Europe three months, having gone there to ascertain the price of champagne wines. (Fol. 19.)

(5.) Having stated as above, the witness was then asked three consecutive questions, which appears at fol. 20.

It will be observed, in regard to these questions, that the first refers to no particular time or place, but comprehends all times and all places of the world, and also refers to price, as well as value; nor is any particular brand or quality of wine referred to, except that the question refers to "Eugene Cliquot Champagne," nor is any source of information suggested to the witness. The questions clearly call for any information the Naval Officer might think he had gathered in Paris, from any source, relative to the *price or value* of "Eugene Cliquot Champagne," *at any time whatever at any place*, whether on that side, or beyond the Pillars of Hercules, or the Golden Gate.

The second question is, "what *was* the jobbing or wholesale *price*" (of what is not indicated) "*at Paris?*" but whether in the time of Hugh Capet, Charlemagne or Napoleon, does not appear to have been thought material!

The "actual market value at Rheims," or even the market *value* at Paris, to which the libel so pointedly refers, is wholly ignored.

The third question is still more irrelevant and foreign to the true issue than either of the others.

Nothing is inquired relative to value or price of any kind of wine, any where, at any time, ancient or modern, but the vagrant Naval Officer is asked to detail to his official friend, the learned District Attorney, who staid at home, "what means" the Naval Officer took, during his three months' stay in Paris, to post himself up about champagne, and what, on the whole, (in his opinion, of course,) was the "*result of the investigation?*"

the more important, and shows that such could not have been the fact.

(2.) That this paper is confined exclusively to "*fine* wines."

The great disparity in price between the wholesale and retail prices of champagne, and between a "fine" and the average article, is well known.

(3.) That this paper, on its face, makes the great disparity of price between its retail price for *fine* wines in Paris, and the usual wholesale price for the wines of exportation; for it says: "Sparkling wines, at *very low* prices, for *exportation*." The two prices are studiously placed in *contrast*, and the statement quoted from the paper adds much significance to the declaration of the witness already quoted, that he was told that "he could obtain "wines for exportation upon *better* terms from the manu- "facturers at Rheims." (See fol. 22.)

Upon this piece testimony we say—

1. That upon the basis of general commercial dealing, which courts respect, and the principles of common justice, which courts always, as far as possible, sustain and enforce, this pretended price current should have been excluded, and its prices have been treated as no standard of reference upon the question in controversy.

It would not be seriously maintained by the energetic and disinterested Naval Officer that he would be willing to have purchased champagne for himself, or that if he had been the agent of an American house, he could have justified himself in purchasing it for such house, for wholesale shipment to America, at the retail prices of the gay hotels of Paris; and if not, can he ask the court to hold the claimant responsible, according to this Paris retail standard?

Had not that officer been more zealous than discreet, would he not have gone to Rheims for wholesale prices, for foreign shipment, and not have confined his inquiries and experience, (however fascinating,) to the brilliant shops of an inland capital, so far away from all the high-

ways of foreign commerce? Would he not have realized the absurdity of attempting to maintain that the great amount and average quality of wines sent for wholesale disposition to a new country like California should be presumed by the court to be of the quality he might find in that great resort of the rich, the gay and the fastidious from all the nations of the globe? Will he deny that the "price current" he *selected* to offer in evidence, stated the highest rates he could find, after three months' search through the gilded *cafés* of Paris?

2. That it disregarded established principles of law, relative to the rules and admissibility of evidence, which will be discussed in connection with other exceptions to evidence which appear in the record.

III. *Third Exception.*—The same witness then proceeded to say that he inquired at "several agencies in Paris," &c., "for champagne at *wholesale*, for exporta-"tion, and the agents *uniformly stated to him their* "*prices*," &c. (Fol. 24.)

Here, again, it appears that the *wholesale* Paris prices were repeatedly stated to the witness, yet he does not voluntarily give them, nor does the learned District Attorney seem to have thought it prudent to ask them. They might have appeared to be scarcely higher than the invoice wholesale prices given, of the wines sought to be forfeited; whereas, if only retail prices of the best wines in Paris are placed before the court, a great disparity of price is apparent.

The very next sentence of this prudent witness illustrates this adroit and euphonious ignoring of all wholesale prices, even at Paris. He says: "That among other "wine-dealers in Paris, (of course he selected the most "fashionable and expensive,) was the house No. 6 Pro-"vence-street, on the outside of which was a sign, E. "Delouze, Royot de la Maison, Minet, Jeune & Co., "Rheims. That he called at said establishment, and "was shown by the proprietor samples of various wines, "*who stated their wholesale prices;* that he was also

"handed *a* printed prices current, which he now pro-
"duced."

The omission to state that this price current contained wholesale prices is as *studied and adroit* here as in the last instance referred to. (Fol. 25.)

There is nothing whatever to indicate that the house last referred to, or its wines, had any relation whatever to, or connection with, the wines or house of the claimant, or with Rheims even, except that the name, Rheims, appeared on the sign. It may, perhaps, be that, to that fortunate circumstance, and to the splendor and fashionable location of his establishment, Monsieur Delouze was indebted to this pleasant call from the worthy Naval Officer during one of his afternoon promenades, which, we may well believe, must have been vastly more pleasant than a real business visit to the dull warehouses or dirty wine vats of provincial Rheims, where alone, however, something reliable, pertinent and just might have been learned concerning the "actual market value, at the "time and place of shipment or manufacture," of the wine sought to be forfeited.

Inasmuch however, as the counsel for the Government had nothing else prudent to offer, and nothing would avail more, if received, than this second Paris retail price current of select, fashionable wines, it was offered in evidence. It was objected to, for all the reasons stated in regard to the former price current; the objections were overruled, exceptions thereto were taken, and the paper read in evidence. (Fols. 25 and 26.)

(1.) It may be remarked here that the objections to this price current are in some respects much stronger than to the prior one, since in no part of the evidence is there any *proof tending* to show that the house from whom this price current was received, *had any agency for, or connection with, the claimant; nor even* that the prices related to Rheims, except on the theory that the paper itself may be invoked to prove the latter fact. It must have been received solely on the theory *that any paper from any Paris wine merchant proved its own contents, and*

was also competent and relevant evidence of the actual market value of Eugene Cliquot's wines at Rheims, in September, 1863.

It should also be noticed that *neither of these prices current is dated, or stated to refer to any date*, nor is there any thing in the record to show whether either is intended to give the current retail prices when Cæsar was approaching to invade Britain; when Louis XIV. put on the crown; when Wellington advanced from Waterloo; when Napoleon returned from Solferino, or when the Naval Officer of the Port of San Francisco made his entry into the French capital.

The witness might have stated all that appears in the record concerning the prices current, relative to the periods of any one of those great events; though, if intended to be applied to the earliest, it would be necessary also to suppose that the printing had been done at a later day; but the Naval Officer did not learn, or at least did not state, at what era the printing was done.

2*d Price Current.*—This appears at folios 26 and 27.

A moment's inspection of the paper shows that it relates only to the retail rates of a gay, fashionable Paris café; the resort of dandies, epicures and sluggards, (always excepting those shrewd Americans, like the Naval Officer, who go there for a purpose;) and that its prices can have no legal or natural relation to the wholesale basket market value of the common wines of exportation a hundreds of miles away, at Rheims.

The paper opens with what clearly shows that sales are made "only from 2 to 6 o'clock;" not too early to interfere with its customers' toilets, nor too late to dress for the opera or "*La Mabille.*"

One class is headed:

"Fine Champagnes, *carte d'or.*"

The other:

"*Gold Spangled* Champagnes." "*Patented.*"

They doubtless would compare with the plain articles of general commerce, sought to be forfeited, as a Hotel in San Francisco with the *Hotel du Louvre*, or as San Francisco with Paris.

NOTE.—It was then proved that the witness had not made *any purchase of champagne wine, while in France.* (Fol. 27.)

IV. *Fourth Exception.*—This exception arises on a question at fol. 28.

The counsel for the Government seems to have had an impression, or to have been troubled by a theory, that Paris prices, (whether wholesale or retail,) if they could be given in evidence at all, might be thought to need some testimony to accompany them, tending to show the relation they bore to prices at Rheims, and he, therefore, attempted to show that relation.

It cannot be doubted that the sagacity which formed this theory, also caused him to be duly impressed with the importance (if he could show nothing of the price at either Paris or Rheims, of the claimant's wines) of showing, at least, the relative prices, at Rheims and Paris, of *some* of the wines mentioned in one or the other of his prices current.

For if he could do that, and could also be indulged, in this particular, in the general latitude and freedom as to the admissibility of testimony, elsewhere sanctioned by the learned District Judge, he could *argue back and forward*, all to the effect that the difference in Paris and Rheims price of champagne in controversy was *very likely, at least just as likely as otherwise*, the same as was illustrated, in respect to the particular kind of wines, concerning which he had made some proof. There would, at any rate, be but two objections to this (alleged) syllogistic method of establishing what should be proved, which would be—

(1.) That there is no natural or logical relation between the several kinds and brands of champagne, such as to

warrant the inference that there was only the same disparity of prices in the two places, as to the one, as there was as to the other.

(2.) That there is *no proof* whatever any where, of the price or value of any kind or quality of wine at Rheims, except that given in the claimant's invoice, as to his own wine.

And when the learned counsel attempted to make his proof on his own theory, he wholly failed; because the worthy Naval Officer had wholly omitted to ascertain any fact, or even to bring any price current relating to the relative price, at the two cities, of any of the kinds or quality of wines mentioned in the prices current in evidence, or of the relative prices, in those cities, of the wines in controversy.

Hence a new kind and quality of wines were resorted to for the comparison deemed necessary. The wines selected for that purpose were "Mumm's Champagne," and "Moet & Chandon Champagne." (Fols. 28 and 29.)

This evidence was objected to, because the inquiry was irrelevant and immaterial; because the testimony, if given, would be hearsay, and because the champagne referred to in the question was of a different kind, price and quality from that in controversy.

The objections were overruled, exception was taken, and the witness stated what he *had learned* at Paris, as to the difference in prices, and as to the prices of the two kinds of wines at Paris and Rheims.

We claim in regard to this question:

(1.) The answer would be mere hearsay testimony, and that the answer would be and is open to every objection, substantial and technical, which can apply to any such testimony.

It does not appear of whom, or when, or even in what part of Paris the report he is allowed to relate was heard.

(2.) The only legitimate object of the testimony, if admissible, must be to show that if the difference in price between Moet & Chandon wine, or Mumm's wine, at Paris and at Rheims, is any given per cent., that therefore only the same difference exists as to that quality of Eugene Cliquot's wine now in controversy. We submit the inference is unwarranted and the conclusion not legitimate. These two selected wines might have been of the first quality, of which but a small amount was made, and that especially for the fashionable cafés of Paris; and in that event the market of Rheims could hardly be much below that of Paris. The facts might be very different as to other wines, such as those made especially for the English, Russian or American markets.

The evidence was designed to, and doubtless did, have the effect of causing the jury to think that they might assume the market of Paris and that of Rheims, as to champagnes generally, to be about equal.

From this basis, and especially without legitimate proof, they were induced to take the unwarranted step to a verdict, viz.: *that all champagnes were nearly of a value, and hence, that from the rates given in prices current, they might conclude that the valuations in the invoice in controversy were too low, and therefore fraudulent.* Short of this argumentative process, all the testimony of the Naval Officer is wholly irrelevant.

(3.) It may be stated generally, if the theory of foreign evidence on which this case has been tried, that it supersedes the necessity of producing witnesses for examination or cross-examination; that it relieves litigants of the trouble and expense of sending commissions to foreign countries as has heretofore been customary; that it avoids the labor and trouble of looking up persons who are experts in peculiar occupations, or who have personal knowledge of facts. All that need be done is to send some official abroad or solicit the services of some needy tourist, who can, with little trouble and without departing from the places of fashionable resort, note in his diary the hearsay of hotels and cafés, and fill his portfolio with bills

of fare and prices current, touching, as near as may be prudent and convenient, the matters, places and times in controversy; and then, when any litigation arises, no preparation is needed, but a perusal of the diary and selections to match from the portfolio.

If this compendious and agreeable system of evidence be sanctioned in this court, the next case that comes up will, doubtless, demand the only possible improvement upon it; which would be, that such extracts from said diaries and portfolios shall be treated as *conclusive evidence* of the forfeiture charged. In this case the court has only adjudged them to prove a *probable cause*, that is, to be *prima facie* evidence!

It is not to be expected that the court will ever be asked that such rumors and bills of fare may be read from "Murray's" or "Appleton's Guide Book," as that would wholly supersede the *necessity* of a "Three months' "Official Champagne Tour in Paris."

REQUEST TO INSTRUCT JURY.

1*st Request.*—(Fols. 29 and 3.)—It is submitted that this request is correct, and its refusal error, and the exception well taken, under the legal rules and principles already referred to.

If an individual offer can in any case be taken as evidence of a general market value, it can be only in a case where the jury has reason to be satisfied that the person making it would, in the course of trade, sell at such rate. The fact of his being unwilling generally to sell at such rate, would require the offer to be treated as no evidence of the general market rate, but as an offer dictated by some specific reasons.

2*d Request.*—(Fol. 31.)—The questions raised by this request, and the exception founded on its refusal, have in theory already been made the subject of remark. To overrule the exception would be to disregard the positive language of the statute. It requires that reference shall

be had to market value "*at the place*, &c., of manufacture;" and not at a place a hundred of miles away.

Had it been shown that the Paris value was the same as that at Rheims, then the exception might not be available; but in the absence of such proof, and of any proof showing that values were even approximately the same, the exception is as good as it would be if the article in controversy had been Port wine, and the places in question had been Oporto and St. Petersburgh.

The theory of the judge, that the market value at Paris tended to show the market value at Rheims, is not admissible. The market value of Rheims was a proper and possible subject of direct proof, from some one acquainted with buying and selling of wine at Rheims.

5th Request.—(Fol. 32.)—This request, as relating to market value, may be discussed in this connection: It is not easy to see on what ground of law or justice the learned judge refused this request. The request, it will be observed, does not raise any inquiry as to what is meant by a market value. It does not ask the court to tell the jury what a market value is generally, or even under very peculiar circumstances. What it asks is this: In view of the question raised before the jury, as to there really being "an actual market value" at Rheims for the wine in question in 1863, it was necessary to give them instructions to apply, in the event that the jury should find that there was no such market value; and therefore the request states a rule *for that event*. We claim that this rule was necessary, and is the true one.

The statute says, the invoice must give the "actual market value at the place," &c., of the article invoiced. Now suppose, (as this request did,) there was no such market value by reason of its being the *first of the article ever made at or near the place;* (certainly a very possible event, and such was the fact in the case of the importation of the great Boston organ, and of the importation of the celebrated Cambridge telescope;) what is to be the guide or rule in making the invoice? An unknown and impossible standard, in the contingency of there being no

actual market value, is laid down in the statute. What does the spirit and intent of the law require? Will the courts lay down no rule, and leave the honest manufacturer to the tender mercies of the custom-house official? Is there, in the nature of the case, any other rule that can be laid down in such contingency but the one stated in the request? It cannot be said that a profit must be added to the actual cost, for there is so far from any reason to think that such additional amount is or probably would be the actual market or other value, (if there shall ever be any market value at all,) that there is, from the nature of the case supposed, no proof at all that the article is or ever would be worth in market even half its actual cost.

It cannot be replied that champagne is a well-known article, long in market, and therefore *must have had and be presumed to have had a market value at Rheims; for whether there was such a market value was the very matter at issue before the jury to decide, and in which it appears from the record there was evidence pro and con. before them, and the instruction was necessary in case, on that issue, the jury should find with the claimant.*

Let us suppose, (what may have been the fact,) that the jury did find that issue for the claimant, viz., that the wine in question had no "actual market value" at Rheims, when the invoice was made; and further, that it was invoiced at cost, *then the whole verdict would depend on the ruling on this single request:* "*Was the* "*manufacturer guilty of fraud or not* in invoicing the "wine at cost, in case there was no actual market value "for it at Rheims, at the date of the invoice?" It is, therefore, a question on which this court is called upon to express its opinion.

This reasoning will appear more forcible from some reference to the language of the charge:

(1.) The judge expressly refused to charge on the subject of this fifth request. He says, "with regard to that ques- "tion, as to whether, in the *absence of any market value* "strictly so called, the jury," &c., "would be justified

" in finding that the statute was complied with by allow-
" ing the producer to estimate the cost," &c., " I conceive
" *it hardly necessary to charge you.*" *And he did not charge on that point at all.* (See fols. 56 and 57.)

Yet he expressly admits that there was a *question of fact* before the jury on this very important point of this request, (namely, whether there was a market value of the wine in question at Rheims,) and uses this language, viz.: " On the part of the claimants, gentlemen, a large
" number of witnesses, most respectable, apparently from
" their official positions, have testified that *there is no*
" *market for this wine at Rheims.* It is for you to say
" whether they are not totally mistaken, whether their mis-
" take has not arisen from a misconception of what is the
" market value of the wines," &c., &c. (Fol. 58.) And immediately after he adds, referring to the same testimony, " it must be taken in connection with the tes-
" timony offered by the United States to show that *there*
" *is a market value for these wines*," &c. (Fol. 59.)

This distinct issue of fact is also clearly stated at fols. 47 and 48. Yet at the end of fol. 56, and also at fol. 62, he refuses all instruction on the point. And finally says, that when requests to charge have " been departed
" from *in terms*, the counsel on either side *may consider*
" *them as refused.*" (Fol. 62.) The counsel for the claimants does so consider.

How could the judge properly refuse all instruction as to the rule of valuation in the invoice, in case the jury found that well defined issue on the subject of " a market value" for the claimant? Was it any more clearly the duty of the jury to say whether the witnesses were mistaken, than it was the duty of the judge to say whether the claimant's counsel was mistaken in his prayer for instructions?

What adds importance to this refusal is, that it relates to the question of the intent and motive, whether fraudulent or not, of a most respectable foreign merchant, in his first effort to conform to a new and peculiar law of the United States, in respect of which he may naturally have felt much embarrassment. The long established rule has been, that no goods can be forfeited for any error, untruth

or defect in an invoice, unless the same was the result of a *fraudulent intent.* Now this request for instructions goes to the very foundation of the alleged fraudulent intent. If Eugene Cliquot believed he might fairly make the invoice as he did, or believed that there was no market value for champagne in Rheims; or if, in fact, there was no such market value, then no fraud can be predicated of the transaction. Yet the judge sternly refused all instructions to guide either the jury or the honest foreign merchant in the contingency referred to.

Law of Evidence.

The principles of the law of evidence, by reason of which it is claimed the foregoing exceptions are well taken, are familiar and easily stated.

It may be said in the outset, in regard to all the exceptions to testimony, that a general objection to the admissibility of testimony is always good where the objection could not have been obviated at the trial, had specific objections been pointed out.

Merritt *vs.* Sherman, 6 *N. Y.* (2 *Sel.*) *R.* 168.

1. The best evidence should be given of which the nature of the case will permit and it is practical to obtain. This rule is well stated by Mr. Justice Nelson, in Clifton *vs.* United States, 4 *How. R.* 247. He says:

"One of the general rules of evidence of universal application is, that the best evidence of disputed facts "must be produced of which the nature of the case will "admit. The meaning of the rule is not that courts require the strongest possible assurance of the matter in "question, but that no evidence shall be admitted, "which, from the nature of the case, supposes still greater "evidence behind in the parties possession *or power*, because the absence of the primary testimony *raises a* "*presumption* that if produced it would give a complexion, at least unfavorable, if not directly adverse, to "the interests of the party."

This rule applied to the case would not permit proof by letter or by Paris prices current, at least unless it was first shown that there was no market value at Rheims, and no person could be found who knew prices there, by whose oath the market value at that place could be proved.

2. To the same effect is the rule as to hearsay evidence:

"Second hand or hearsay evidence is used in refer-
"ence to that which is written as well as to that which
"is spoken; and, in its legal sense, it denotes that kind
"of evidence which *does not derive its value solely*
"*from the credit to be given to the witness himself,*
"*but rests also in part on the veracity and competency*
"*of some other person.* Hearsay evidence, as thus de-
"fined, is uniformly held incompetent to establish any
"*specific fact which in its nature* is susceptible of being
"proved by witnesses who can speak from their own
"knowledge."

1 *Greenleaf's Ev.* § 99.

Could not the value of wines at Rheims have been proved under a commission sent there, in which experienced merchants could have sworn as to the "*specific fact*" of the value of champagne, at the date of the invoice, had the Government preferred that method to a "Three months' Champagne tour in Paris?" How much of the testimony objected to rests on the credit to be given to Mr. Naval Officer Farwell? Does not his whole story rest "on the veracity and competency" of some other person, (and who but himself knows what person?) who gave him the prices current, and the general rumors on which his whole story rests? On whose veracity do the letters rest, to the truth of which no one has made oath?

See, also, 1 *Starkie Ev.*, pl. 2, § 55, pp. 180, 181.

The general rule is also laid down to the same effect in

Morris *vs.* Lessee, &c., 7 *Peters' R.* 554.

This last case states the exceptions to the general rule, which are historical facts of general notoriety, &c., &c., but even these cannot be proved by hearsay, or by an author's writing during the lifetime of those who lived cotemporaneously with the events to be proved.

There are also exceptions in favor of official certificates, records and public documents; but then it must appear that they were made or kept by those whose official duty it was to make and preserve them faithfully.

Their admission rests on the legal presumption that official duty has been performed.

1 *Greenleaf's Evid.* §§ 491, 497.

3. But it may be said that prices current are admitted in evidence. This is not denied, nor is it necessary to determine with any accuracy the conditions precedent to these admissions; for the terms of their admission in the present case were without any of the limitations uniformly insisted upon by the courts. It must at least appear, before a "price current" can be read in evidence, (1.) That dealers in the articles therein referred to are in the habit of giving credence to such "price current." (2.) That it is generally understood and admitted to be a report of actual transactions and real prices. In this case nothing of the kind appears. For aught that is stated, no such paper was ever before printed; no one relies upon it; no transactions are represented by it; and the paper might have been printed in the 16th century at London, or in the 17th at Canton, or in the 18th at San Francisco, without conflicting with any part of the testimony.

(a) Where a defendant was first proved to have been in the habit of correcting the prices current of a newspaper, they were allowed to be read against him.

Henkle *vs.* Smith, 21 *Ill. R.* 238.

But general advertisements in newspapers cannot be read in evidence.

Sweet *vs.* Avount, 2 *Bay R.* 192.

The English courts will not allow so well known and authoritative a work as "Lloyd's Register of Shipping" to be read in evidence. Per Lord Denman.

Freeman *vs.* Baker, 5 *Carr. & Payne*, 475.

Nor is a standard scientific book, such as "*Youat on the Horse*," admissible to be read in evidence. (Harris *vs.* The Panama R. Co., 3 *Bosworth N. Y. Rep.* 7. And see, to a similar effect, Commonwealth *vs.* Wilson, 1 *Gray (Mass.) R.* 337. Melvin *vs.* Eartly, 1 *Jones N. C. R.* 386. Launing *vs.* The State, 1 *Chandler (Wis.) R.* 264.)

The highest court in the State of New-York, in 1865, held that recitals of facts in a public statute are only *prima facie* evidence of facts between individuals, and that such recitals in private statutes are not evidence at all. It was doubted whether a historical work could be read in the lifetime of its author, and it was held that a local history (as of a county) is not admissible in evidence at any time. Only public and general histories are admissible.

McKinnon *vs.* Bliss, 21 *N. York R.* 206.

And this court has not been disposed to extend the common law rules of evidence in favor of hearsay and unsworn papers.

It has been decided, that though official "Army Registers," which are delivered to the departments, and contain the army regulations, may be read as evidence "of "facts strictly, that they may contain, &c., yet they can- "not be read to prove the pay or emoluments of officers, "&c."

Wetmore *vs.* The United States, 10 *Pet. R.* 647.

4. But there are certain cases which at first view may seem to lend some sanction to the ruling of the learned judge. Such as—

Wood *vs.* The United States, 10 *Pet. R.* 342.

In this case *other invoices* than the one in controversy were allowed to be read in evidence against the claimant.

But they were other invoices of the *same claimant*, and were introduced to show fraud. The question was wholly different from one of mere market value. Besides, the letters or prices current read in this case were papers with which the claimant had no relations and nothing to do.

See pp. 356, 358, 360, 361 of 16 *Pet. R.*

The court recognised such methods of proving fraud "as exceptions to the general rule." (P. 360.) Yet the exception is limited to other doings of *the party* "of a kindred nature," &c. (P. 360.) It does not make any and every paper a public officer may pick up or have given to him in one of the Café's of Paris evidence against a claimant on a question of actual market value. To the same effect as the last case, and upon the same theory, is the case of Taylor *vs.* The United States, 3 *How. R.* 197. It was only the *same* owner's papers in other matters, and to prove fraud, that were allowed to be given in evidence. The foundation and limitations of the rules of evidence as to market value are discussed in Clark *vs.* Baird, 9 *N. Y.* (5 *Sel.*) *Rep.* 183.

5. The jury should have been instructed that they could not consider, in coming to their verdict, the market value elsewhere than at Rheims, unless they were first satisfied there was no market value at Rheims. This is the most favorable ruling the Government could ask.

Gregory *vs.* McDowell, 8 *Wend. R.* 435.
Dana *vs.* Fielder, 12 *New-York R.* 40.
Wemple *vs.* Stewart, 22 *Barb. N. Y. Rep.* 154.
Haines *vs.* Haight, 14 " " " 76.
Harris *vs.* The Panama R. Co., 3 *Bosworth N. Y. Rep.* 7.

The case of Alfonso *vs.* U. S. (2 *Summer's R.* 421) only shows that the Government might have found competent witnesses in this country instead of resorting to letters and unauthenticated prices current; and hence the proof allowed is all the more clearly a violation of the fundamental and familiar rules of evidence.

Even if there were any doubt, at common law, as to the right to resort to other places for market values than the place in question, there could hardly be any under the statute of 1863. No language can be more unequivocal and imperative in making the market value at Rheims, the place of manufacture, the standard. On what theory then can the Government go elsewhere for that standard; at least before it has proved that there is no such standard at Rheims, or that the value at the place resorted to is the same as at Rheims?

The claimants maintain that if there was no actual market value at Rheims, one of these two results must follow:

(1.) That the cost of the champagne (by way of analogy to the rule under the older revenue laws) at Rheims must be taken as the standard; or,

(2.) That there is no standard, and hence no liability to forfeiture.

But to resort to sharp technical construction and far-fetched inferences, to condemn the property of foreign merchants, who at worst have only made a blunder in construing one of our new revenue laws, is not more unworthy of the dignity and magnanimity of the Government, than it is prejudicial to the best interests of commerce and incompatible with well-established legal principles.

To tell the jury that these Paris retail prices were but "slight guides," (see fol. 54,) was to allow them, at their option, to be guided in the verdict solely by what were really only "false guides" and illegal standards of prices and value.

Direct proofs of wholesale market values at Rheims could and should have been offered; or if there were no such value, then some other standard of value at Rheims should have been laid before the jury, such as cost, or cost with a profit added, at Rheims; (an instruction we shall

soon see which was wholly refused by the judge,) and the jury, in no event, should have been allowed to be guided by the retail prices of Paris, until it was made to appear that there was no "actual market value" at Rheims, or other place near Rheims, at wholesale rates, that could be proved.

It is a striking fact that the agent of the Government did not *go to, or even inquire about wholesale or actual market rates at Rheims at all; nor was an attempt made by the District Attorney to take any proof in the usual or regular way, at that place, at any stage of the case.*

If the judge considered it might be found proved that there was no market value at Rheims, and hence that market values at other places could be proved, he should have told the jury not to be guided by Paris prices *only in the event* that they found there was no market value as Rheims.

Revenue Laws.

It will enable the remaining requests to be more satisfactorily presented, if attention is first directed to the various sections of the revenue laws applicable to this case, and to prayers of the libel.

(1.) The first act is that of 1799, 1 *U. S. Stat.* p. 627. The § 66 and § 67, p. 677, are the only ones that can be claimed to be applicable, except that the § 71, p. 678, relative to *onus probandi*, is claimed by the Government to apply in its favor; and, if so, it affects the 9th request, fol. 43, of the *Veuve Cliquot* case, (which is No. 321.) and the corresponding request being really the *eighth* (fol. 37) of the Eugene Cliquot case, (which is No. 320.)

This § 66, it is well known, relates only *to purchased goods*, that is, to those purchased and not manufactured by the importer.

Alfonso *vs.* United States, 2 *Story's R.* 422.

The United States *vs.* 26 Bales, &c., 20 *Law Reporter*, (1857,) 10 *New Series*, pp. 444, 449.

United States *vs.* Sixty-Seven Packages, &c., 17 *How R.* 85.

Its forfeitures relate to goods, &c., which "shall not be *invoiced* according to the actual *cost* thereof at the place of exportation, *with design* to evade duties," &c. It allows forfeiture of such goods or recovery of value of owner, &c., "at the actual and real *cost*," as stated in the proviso. It relates to *invoices* and not to entries of goods.

The § 67 is confined to the case where "any packages examined shall be found to differ in their *contents* from the entry," &c.

It is obvious that the libel before the Court is not based on either of these sections.

Wood *vs.* The United States, 16 *Peters*, 432.
Buckley *vs.* The United States, 4 *How. R.* 251.

(2.) The act of 1818, (3 *U. S. Stat.* 433,) was limited to two years. (P. 438, § 26.)

(3.) The act of 1823, (3 *U. S. Stat.* p. 729,) seems to be the first act that included goods manufactured as well as those purchased by the importer. (§ 5, p. 732.)

The § 15, p. 735, of this act relates to *invoices*, as well those to which the goods "do not correspond" as to those that are "falsely charged" in such invoice, &c.; but this section is repealed by the § 4 of the act of 1860. (4 *U. S. Stat.* p. 410, § 4.)

(4.) The act of 1830. (4 *U. S. Stat.* p. 509.) The § 4 of this act is material to be considered.

This section speaks of "goods imported," generally, without noticing the distinction of any prior statute between goods manufactured and those purchased by the importer, and may, therefore, be held to relate to both classes.

The language of the section is confined to frauds in reference to *invoices*, and can hardly be extended to *entries* at all; indeed, the word *entry* does not occur in the section. It also only relates to real, *intended* frauds, and not to constructive or inadvertent frauds, (if there can be such under the revenue laws;) but it does cover both the

case where the goods "do not correspond with the invoice," and the case where they are "falsely charged in such invoice." It is therefore more comprehensive than the act of 1799.

A forfeiture is provided in two cases only; both relating to goods that pay ad valorem duties, viz.: (1.) "Where any package shall be found to contain any ar-"ticle not described in the invoice."

(2.) "If such package or invoice *be made up with in-*"*tent*, by a false valuation, or extension or otherwise, to "defraud the revenue."

It will be further noticed in the language above cited from the § 4 of the act of 1830, declaring the two grounds of forfeiture, that the first very clearly cannot be made applicable to the case before the court. And, therefore, the only applicable ground of forfeiture under that section is in case it is charged and proved that the "invoice" before the court was "made up with *intent*, by a *false* valuation, to evade or defraud the revenue."

(5.) The act of 1832. (4 *U. S. Stat.* p. 583.) The § 14 (p. 593) of this act repeals a part of the § 4 of the act of 1830, but it is not a part that can apply to the case before the court. Yet, this § 14 contains a provision which may possibly be claimed to apply to this case, viz.: "if a package be made up with *intent* to evade or defraud the revenue, the package shall be forfeited." Still, like the § 4 of the act of 1830, this provision requires the condition of actual *intent to defraud* to be proved.

If the absence of proof of such an ingredient in making the invoice in controversy did not render the discussion immaterial to the present issues, it would here be argued:

(*a.*) That the § 14 of the act of 1832 only related to articles "composed wholly or in part of woollen and cot-"ton."

(*b.*) That said provisions are suspended by the § 21 and § 26 of the act of 1842. (5 *U. S. Stat.* pp. 565 and 566.)

NOTE.—This § 21 of the act of 1842, (if by any possibility it can be claimed to be applicable to this suit,) also requires the element of "fraudulent intent" to be proved as a condition of forfeiture.

(6.) This brings us to the act of 1863. (12 *U. S. Stat.* p. 737.)

It begins with providing *new requisites* in respect to invoices, and requires their production before consuls, &c., and a declaration to be endorsed thereon; and that such declaration shall state when and where the goods were purchased, &c., if they were purchased goods; and if they were "obtained in any other manner than by purchase, *the actual market value thereof, at the time and place when and where* the same were procured or manufactured, &c. The person producing said invoice must state the port of the United States at which it is proposed to enter the goods, &c.; and the facts of such production and declaration, &c., must be entered by the consul, &c., on *triplicate* invoices, (a new provision,) &c., and one of them is to be forwarded to the Collector of the port where it is intended that said goods shall be entered.

No goods are to be "admitted to an entry" after July 1, 1863, unless the invoice presented conforms to this act, nor unless there shall be a Consular certificate, &c., nor "unless said invoice shall be verified by the owner or "consignee, or the authorized agent of the owner or consignee thereof," to the effect that "said invoice and declaration endorsed thereon are in all respects true."

Then comes the following provision of the first section: "And if any such owner, consignee, or agent, of any "goods, wares or merchandise shall *knowingly* make or "attempt to make any *entry* thereof by means of any "false invoice or false certificate of a consul, vice-consul "or commercial agent, or of any invoice which shall not "contain a true statement of all the particulars herein-

"before required, or by means of any *other false* or "fraudulent document or paper, or of any *other* false or "fraudulent practice or appliance whatsoever, said goods, "wares or merchandise, or their value, shall be forfeited, "as *other* forfeitures for violation of the revenue laws."

It should here be noticed that this section, in making *new provisions* as to *entries*, refers and relies on the old and familiar ones as to *invoices*. Hence the words "*false* invoices" and "*other* false or fraudulent appliances" are used. For the meaning of a false or fraudulent invoice, &c., we are, of course, to look to the acts of 1799 and 1830, which have been so often adjudicated.

NOTE.—The concluding clause of § 1, is that relating to goods coming from any place beyond Cape Horn or the Cape of Good Hope, herein elsewhere referred to.

The § 3 makes any person guilty of *knowingly* doing what makes the goods subject to a forfeiture liable to fine and imprisonment.

The § 11 gives the District Attorney two per cent. on all moneys collected or realized in all suits or proceedings under the act.

It may be further remarked of the foregoing citation relative to the "entry," &c., from the § 1 of the act of 1863:

(*a.*) That it is the only clause of said act upon which it can be claimed this suit can be maintained.

(*b.*) That it is confined solely to wrongful *entries*, or attempts to make them, and does not forbid or attach any forfeiture or penalty to the making or to the attempt to make a false or fraudulent *invoice*. However false an invoice may be, and however fraudulent the intent with which it may have been made, no proceedings can be based thereon, and no consequences are declared to follow under the § 1 of the act of 1863.

This still more forcibly illustrates the remark already made, that for whatever can be the foundation of a for-

feiture in connection with any thing false or fraudulent in an invoice, we must recur to the familiar acts of 1799 and 1830.

The same remarks as to this act being confined to entries, apply also to the § 3, which is also confined to *entries;* and, indeed, is equally applicable to the whole act, except the § 2 and § 7, which are broader, but do not apply to suits for forfeiture, or to suits to punish defrauders criminally.

(*c.*) The "owner, consignee and agent" seem to be treated as distinct persons, (at any rate, as that is the construction most unfavorable to the claimants, it will be that especially considered,) so that the act of either may cause a forfeiture of the goods.

And the § 3, by the use of the words "any person," appear to make each and all of them liable to be punished criminally.

Whether the theory of revenue laws, that treats the consignee as owner, is to be applied to this section, is not very material. It would seem that the real owner and the real consignee are those alone referred to.

It follows, that if the act of either of the said three classes of persons may work a forfeiture, that the act of each is to be taken as a whole and by itself. It cannot therefore be claimed that what the agent *personally does* is (on any theory of the law of principal and agent) also done by the owner or consignee, by or through the agent.

(*d.*) The word "knowingly" clearly applies to all the means of procuring an entry to which a forfeiture is attached, as if repeated under each category. And whether the same is done by the owner, the consignee or the agent, it must have been done "knowingly" by either, or no forfeiture is denounced.

(*e.*) The only clauses that can be claimed to be available in this suit are the following: "By means of any false invoice or false certificate," &c., or "by means of,"

&c., "any invoice which shall not contain a true statement," &c. But before both these last clauses we must insert the phrase, "if any such owner, consignee or agent of any goods, &c., shall *knowingly* make, or attempt to make an *entry* thereof by means," &c.

The same reasoning applies to the § 3; and it would seem clear that the goods cannot be forfeited by reason of the act of a consignee or agent of the owner, without proof of such acts by such agent or consignee as would render them or one of them liable to be punished criminally under the § 3. And will it be pretended that an agent or consignee can be punished by imprisonment for "effecting an entry of any goods" for less than value, by using a false or fraudulent foreign invoice, without proof that he did it knowingly?

(*f.*) It will also be observed, that there is nothing in this § 1 which authorizes the penalty of forfeiture to be made out by uniting a partial violation of this § 1 of the act of 1863 with a partial violation of any prior act, such, for instance, as the § 4 of the act of 1830. Nor is there any warrant for combining the language of these two or any two acts together, to make out the forfeiture.

The forfeiture must be made out complete, if at all, under one act or the other, and not by any interweaving of their language.

THE LIBEL.

It contains but one count. It alleges that Alfred Borel, of San Francisco, is the "consignee" of the champagne.

That said Alfred Borel, "by *his* attorney or agent, Edward De Ruttle," &c., "*made* an entry," &c., and "on such produced and left with the Collector, &c., said invoice," &c., "with the declaration endorsed," &c.; and then alleges that "said *invoice*, &c., were and are false and fraudulent," &c., and that "said *owner knew* that said invoice was false," &c. Then follows an averment that said Alfred Borel and said Edward De Ruttle, at the time of presenting said invoice, &c., and entering

said goods &c., *well knew* that said "invoice and declaration were false."

Up to this point it has not been stated at all that the owner *entered* the goods.

But then next follows an allegation that the "owner and consignee of said goods," &c., *and* said De Ruttle, "did *knowingly make an entry*," &c., "by means of a *false* invoice and of a *false* certificate," &c., "by reason whereof said goods," &c., "are forfeited," &c. (Fols. 6, 7 and 8.)

(1.) It will be observed, that the only *entry* alleged against the owner is one made *jointly* with the consignee and agent.

(2.) That the only allegation of the libel that can be claimed to bring the case within the § 4 of the act of 1830, is the following, (fol. 8:) "false invoice," &c., and "false declaration, &c., with a design to evade some part of the duties lawfully chargeable thereon."

But if this language can be construed as adequate to bring the case within the provisions of the § 4 of the act of 1830, (which the claimants deny,) the language of that § 4 being as follows, "if such, &c., invoice be made up *with intent*, by a false valuation, &c., to defraud the revenue," then the claimants maintain that it would clearly be necessary for the Government to prove that the invoice was made up "*with intent to defraud the revenue*" *on the part of the owner when he made up the invoice in controversy.*

(3.) And the claimants maintain further, that it is not permissible to claim a forfeiture under a libel containing only one count, under or upon either one of two statutes, as the Government may choose, especially when, as in this case, the consequences, both civil and criminal, are quite different, and there will be *nothing in the record to show under which statute the goods were declared forfeited.* We claim that it was indispensable that it should in some way with certainty appear in the libel under

what statute the forfeiture was claimed, and the goods condemned. The cases which have gone to the extreme limits of construction and inference in favor of the Government, in revenue construction, require this; and all the cases of this nature claiming forfeitures under different statutes, contain counts based distinctly on the different statutes.

Buckley *vs.* United States, 4 *How. R.* 251, 252 and 262.

Wood *vs.* The United States, 16 *Peters' R.* 342, 343.

Clifton *vs.* The United States, 4 *How. R.* 243.

The libel in the last case contained thirteen counts.

If it be answered, to the last point, that the libel is wholly founded on the § 1 of the act of 1863, we can only respond that such would seem to be an inference naturally drawn from its language; but that on such construction of the libel, all benefit of former acts, *as substantial grounds on which to claim forfeitures*, must be regarded as abandoned by the Government.

The learned District Judge appears to have considered that the law of 1863 was the only one on which the suit was based. (Fol. 40.)

Evidence as to Entry.

When we proceed to the proof as to who made the entry, we find that the owner *had nothing to do with it;* and that it was solely made and procured to be made by the consignee and the agent of the consignee. The nearest connection of the owner with the matter was that of forwarding an invoice to "his agent, at San Francisco." (Fol. 18.)

Will the counsel for the Government pretend that this was "knowingly an attempt to make an entry," under the § 1 of the act of 1863? If so, the goods might have been seized, and the forfeiture was fully incurred before the goods left the harbor of Bordeaux. Indeed, if the

energetic Naval Officer had taken the District Court with him, he might have had the goods condemned by a court sitting in a Paris *café*, when the goods were on the piers of Bordeaux.

Unless the foregoing is "to make or attempt to make an entry," within the meaning of the § 1 and § 3 of the act of 1863, then these goods cannot under that act be forfeited by reason of any act of the owner.

Proceeding further in the record, we find that all preliminaries and the acts constituting the entry were done and taken by Alfred Borel and his agent. (Fols. 6, 7 and 18.)

If it was conceded that they *knowingly* did what is charged in the libel, (*i. e.*,) "made an entry," &c., and that what is so proved in the record was solely done by them, will it be denied that they are liable to the punishment denounced in the § 3? And if one or each of them is the "any person" in that section referred to, can it be claimed on any thing proved in this record, that the owner in France is also that "any person," and liable to imprisonment under the act of 1863; whatever might be his liability under the act of 1830, which refers to fraudulent invoices?

A clear understanding of what is meant by an *entry*, is a pre-requisite to any correct determination of what is meant by an "attempt to make an entry," &c.

An entry is not a series of acts, beginning in France, (or Australia,) initiated by a French owner, stretched across the Atlantic *via* Cape Horn, and completed some months later, by the joint co-operative acts of the consignee and the agent of the consignee.

The entry itself, in one sense, is an official custom-house paper, and the making of an entry is the filling and perfecting of that paper as the law requires, accompanied with certain official acts. An attempt to make an entry would be, at least, the attempt to actually do something which is a part of the making of an entry.

What constitutes making an entry in its complete sense is defined in the § 36 of the statute of 1799. (1 *U. S. Stat.* p. 655.)

The acts are such that the foreign owner, thousands of miles away, can have no possible legal or logical connection with them.

It can hardly be seriously claimed, that the mere intention (on the part of the foreign owner, if that were conceded, to have a false entry made, and thereby) to commit a fraud on the revenue, can be punished by forfeiture. If so, however, the answer is, that this court has decided the contrary.

"The law did not intend to punish the *intention*, but "the *attempt* to defraud the revenue." Marshall, Ch. J., in The United States *vs.* Riddle, 5 *Cranch R.* 312.

That case was far stronger than the present in favor of the Government, for an invoice that must have been false, *was actually presented to the Collector to have the entry made.* It was held not an attempt to make an entry. (See p. 311.)

The remaining requests are Nos. 3, 4, 6, 7, 8, 10 and 11.

We are now prepared to consider them, and will treat together such as bear on substantially the same points.

Before proceeding to the discussion, a general observation applicable to all of them may be made.

But looking to these requests it will be seen that in respect to all of them, the learned judge either wholly refused them, or only responded to them as stated in his charge to the jury, which may be found at fols. 39 to 66. Specimens of this disposition of them are found at fol. 37, &c., &c. And to make perfectly clear that he intended to finally refuse all the instructions he did not assent to, he says, at fol. 61: "I think that I have referred," &c., "to every point that it is necessary for me to touch "upon." And again he says: "Any instructions that "have been *asked* for and not given, and which have "*been departed from in terms*, the counsel on either "side may consider as *refused*." (Fol. 62.)

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Requests Nos. 3 and 6.—They are to be found at fols. 32 and 35, and it will be convenient to consider them together.

They relate to the question whether the want of good faith or of knowledge of the requirements of the law on the part of the owners in making up the invoice, was a necessary ingredient to bring the case within the statute under which the action is brought. In other words, must fraud or bad faith on the part of the owners in making up the invoice be shown to establish the forfeiture.

Both these requests were refused when made, and there is nothing on the subject in the charge, and hence the jury were told that it was indifferent to the result whether or not the invoice was made in good faith and through ignorance or mistake, or whether it was made with intent to defraud. What the learned judge has said at fols. 59 and 60 has not escaped observation. It does not respond to the request or help the difficulties. He refuses the request, and it would seem because he supposed the word *knowingly* had, in the statute of 1863, been substituted for "intent to defraud." "Knowingly" relates to *entries*, the other words to *invoices*.

The two statutes of 1830 and 1863 do not relate to the *same subject matter*, and knowingly is not in any sense substituted for "fraudulently," or for "intent to defraud." It is a new word in a new statute, relating to a new subject, and has clearly been erroneously applied by the learned judge. We say:

(1.) That if the case rests at all on the statute of 1830, or on any statute prior to that of 1863, the refusal of these requests is clear error, and the exceptions taken are fatal to the judgment, as all those statutes require fraudulent intent to warrant a forfeiture.

(2.) If the refusals can be justified because the action is solely founded on the act of 1863, and that therefore it is sufficient if it appear that the invoice is *false*, then it follows *that the action is solely for a forfeiture* for "knowingly" making an *entry* "by means of a false invoice or false certificate," &c., under the first section of the act of 1863.

NOTE.—Before considering the case in the aspect it

will present under the 7th and 8th requests, if confined to the § 1 of the act of 1863, as just explained, attention should be called to an important point in the charge.

It appears at fol. 18 of the record, that the invoice and "declaration" were both made by "the claimant," Eugene Cliquot. Now the learned judge in his charge, referring to the last recited facts, says: "He *forfeits these goods* if you believe that "*he knew this invoice* did not express their market value "—their actual market value." (Fol. 61.)

This direction was greatly calculated to mislead the jury. It could hardly be justified even if the action had been plainly under the § 4 of the act of 1820; for such a direction would not include "intent to defraud the revenue," which that act requires to warrant a forfeiture. And such a direction is clearly and *utterly inconsistent with any theory* of treating the action, if it is to be considered as founded on the § 1 of the act of 1863. It in fact draws the attention of the jury wholly from *all the material averments*, under the last named act, and tells them plainly, "if you are only convinced that Eugene "Cliquot knew this invoice not to express the market "value, then you will render your verdict for the Govern- "ment, no matter what you think about any other part of "the case, or whether there has been any entry at all "proved."

This ruling certainly cannot be justified. And it only makes more plain the insufficiency of this libel, and illustrates the force of what has been said already of the need of separate counts, founded upon the different statutes. It is plain that the learned judge (as we may well suppose the jury to have been) was not a little confused as to whether the action was founded upon an alleged false entry, or upon an alleged false invoice. And in urging the insufficiency of the libel, we may call the attention of the court to the cases cited.

Requests Nos. 7 and 8.—They are to be found at fol. 37. They claim in substance that if the action is to be regarded as founded on the § 1 of the act of 1863, and is

for making an entry by means of a false invoice or declaration, that it must appear that De Ruttle and Borel, *who made it*, or both of them, *knew or believed* the same to be false, &c. The requests were refused and exceptions were taken.

After what has been already said generally, there is no occasion to enlarge on these requests or the rule we claim. The requests were, when made, both refused, and there is nothing in the charge on the subject, except at fol. 60.

The statement at fol. 60, that the jury "were obliged to find the entry was made *knowingly* by means of a false invoice," taken in connection with his refusal to tell the jury that it was necessary for them to find that De Ruttle or Borel so made it *knowingly*, &c., was equivalent to telling them that they might find that *some one else* so made the entry, (as, for instance, the owner,) or that they need not find that *any one* made it. No such ruling is warranted either by the law, the libel or the evidence; and the ruling and the refusal of the requests was clear error. It must be found that the owner, agent or consignee made this entry.

What the learned judge says at fol. 62 as to his refusal and charge, and which has already been cited, applies also to these requests.

What he says at fols. 60 and 61 about the word "knowingly," has no application *as used by him* to the *entry;* but in the statute it is *applied to the entry* alone; whereas the judge applies it to the *invoice.*

We claim there is clear error in not telling the jury, as the § 1 of the act of 1863 requires, that it must appear that the entry (since the owner did not make it) was made by the consignee or agent "knowingly," (*i. e.*, "with knowledge," according to Webster,) that the *invoice or declaration was false.*

Request No. 9.—This is found at fols. 37 and 38, and relates to the *onus probandi.* The request was refused and exception taken; and at fols. 61, 62 and 63, the learned judge applies the provision of the act of 1799 to this

case, and decides that the Government has shown probable cause. It is obvious the ruling was very material to the result of the case.

The § 71 of the act of 1799 (the source of this doctrine of *onus probandi*) is confined to suits brought or seizures made (in its own language) "pursuant to this act," *i. e.*, said act of 1799. It was never considered to apply to suits followed by seizures under any other act, except where it had been by law extended to suits thereunder.

The § 7 of the act of 1830 refers to the act of 1799; the language of the act of 1830 is this: "All forfeitures "under this act shall be *sued for*, *recovered* and *distributed* "according to the provisions of the act," &c., of 1799.

The regulations on these subjects in the act of 1799 are contained in § 89 and § 91, p. 677 of 1 *U. S. Stat.*, and the rule of the *onus probandi* mentioned in the § 71 of the latter act is not, it would seem, made applicable to suits under the act of 1830.

It has been decided repeatedly in the Southern District of New-York that the *onus probandi* provision of the act of 1799 does not apply to the act of 1830. The following is one example:

The United States *vs.* 1,406 Boxes of Sugar, Von Hoffman & Co., claimants. Before Smalley, J., June 26, 1862.

Smalley, J.—"I have already once this term ruled "that the 71st section of the act of 1799 does not apply "to the act of 1830. I have not ascertained that the "question has been before any court, or been passed "upon, but the more reflection I have given to that ques- "tion induces me to adhere to my first opinion, that the "71st section of the act of 1799 does not apply to the "act of 1830. I do not think the court are warranted "in extending that peculiar provision which changes the "whole burden of proof from the penal statute. There- "fore, in this case, the question of probable cause does "not arise for the court to pass upon. Then the inquiry "goes to the jury like any other case, to be determined by

"the fair balance of testimony; and upon the motion "you (Mr. Evarts) submit, which I suppose is, that it be "taken from the jury on the idea that there is no evi- "dence tending to show fraud," &c.

This § 7 of the act of 1830 is far more restrictive than the § 12 of the act of 1832, (4 *U. S. Stat.* p. 593,) which possibly may be broad enough to extend the *onus probandi* provision to forfeitures under the act of 1832.

To the same effect may be cited the § 26 of the act of 1842, (5 *U. S. Stat.* p. 566.) It extends "the laws existing, &c., to the collection of the duties imposed *by this act*, &c., and to proceedings for forfeitures," &c. This is a far different provision from that in the § 7 of the act of 1830, and looks as if designed to cure defects of that act, and to include the *onus probandi* provision.

Proceeding to the act of 1863, it should be observed, that though this act twice refers to the act of 1799, once in the § 1 and again in the § 14, it nowhere, like the acts of 1830, (in a limited way, and the acts of 1832 and 1842 in general terms,) adopts, applies or extends the provisions of the act of 1799, relative to suits, proceedings or forfeitures, or *onus probandi* to suits or forfeitures under the act of 1863. On the contrary, the § 14 of the act of 1863 *repeals* the § 89 of the act of 1799, which is the very section which the act of 1830 extends to suits under the latter act, and which is among those so extended or adopted by the acts of 1832 and 1842, as to suits under those acts respectively.

It is not to be presumed that so oppressive a rule as the one in question will be extended by construction or inference. It is against the theory of the American law, and has no foundation in the general principles of justice; and there is no statute authority for applying it to an action under the act of 1863.

In the case of Wood *vs.* The United States, 16 *Peters*, 342, where this rule of *onus probandi* was applied, the application was only made under counts especially based upon the § 66 of the act of 1799 and the § 14 of the act of 1832.

It appears at p. 344 that there were counts under three

separate acts, those of 1799, 1830 and 1832. At p. 342 it appears that the court held that the rule of *onus probandi* applied as to the counts under the acts of 1799 and 1830, and not to those under the act of 1830.

Request No. 10.—This may be found at fol. 38; and in view of the language of the learned judge at fol. 60, there is not perhaps any occasion to say more upon the subject of this exception than has been already said under various other exceptions.

Request No. 4.—This may be found at fol. 33. There was a refusal, and exception taken; and the charge says nothing on the subject. What is said at fol. 62 as to instructions, enables us to consider this as a request intended to be absolutely refused.

The request is founded on the last clause of the § 1 of the act of 1863, which limits its application as to articles imported from "beyond Cape Horn or the Cape of Good "Hope, until the first of January, 1863."

It is familiar knowledge that similar provisions are contained in several revenue laws.

We claim that the meaning of the *last proviso to the first section of the act of* 1863, (12 *U. S. Stats.* 739,) *is, that the provisions of the act shall not apply to invoices of goods, wares or merchandise imported into the United States from any place beyond Cape Horn or the Cape of Good Hope, when said invoices were made up at any time prior to the first day of January,* 1864.

The language of the proviso is as follows:

"And provided further, that the provisions of this act "shall not apply to invoices of goods, wares or merchan- "dise imported into any port of the United States from "any place beyond Cape Horn or the Cape of Good "Hope, until the first day of January, eighteen hundred "and sixty-four."

Now what was the intent of Congress in employing and arranging these words as they are above quoted?

Without subjecting the sentence to an exact grammatica analysis, and without using precise technical terms, let us separate it into its natural parts, and see to what extent this process will assist us in ascertaining the true meaning.

"The provisions of this act" "shall *not* apply"—to what? The learned counsel for the United States would probably say "to goods, wares or merchandise imported into any port of the United States." But, if so, what office does the word "invoices" or the preposition "of" fulfil? Will it be seriously asserted that the term "invoices" is *descriptive* of, or that it in any way qualifies the words that follow?

Suppose the proviso had been thus constructed: "The provisions of this act shall not apply to *invoices* until the first day of January, eighteen hundred and sixty-four," would a doubt have been suggested of the applicability of the exception to an invoice made up on the last day of December, 1863, no matter at what time the *goods* designated in that invoice might have reached San Francisco? Now, between "invoices" and "until" insert the words "of goods, wares or merchandise imported into any "port of the United States from any place beyond Cape "Horn or the Cape of Good Hope," and what other possible effect can these words have than to restrict the generality of the term "invoices," by *specifying* the particular invoices meant. It seems to us that their combined force is simply that of an adjective which qualifies the antecedent noun.

"The provisions of this act" "shall not apply" "to invoices."

To what invoices? "To invoices of goods, wares or merchandise." To invoices of *what* goods, wares or merchandise? "To invoices of goods, wares or merchandise imported into any port of the United States from any place beyond Cape Horn or the Cape of Good Hope."

It will be remembered that one of the subjects of the act is *invoices*. To the mode in which *invoices* are to be prepared, verified and certified, the attention of Congress seems to have been particularly directed. The conformity of the invoices to the requirements of the act, is made

the condition precedent to entry, and the non-conformity of the invoices to those requirements, or the falsity of the invoices, followed with an attempt to make an entry, is made the condition precedent to forfeiture. It is therefore evident that the object of Congress in adding the proviso, was to except a distinct class of *invoices* for a limited period from the operation of the act.

It is useless further to elaborate this branch of the argument, for the construction for which we contend gives to the proviso its natural, obvious and grammatical meaning, and no other construction is possible which logically, at least, would not be absurd.

At the beginning of that section it is enacted "that *from and after* the first day of July, eighteen hundred and sixty-three," invoices shall be made in triplicate, and signed by the owner or manufacturer, or by his agent, when the goods were procured otherwise than by purchase; that certain declarations shall be endorsed upon them; that they shall be produced to the consul or other proper officer nearest the place of shipment, and shall be by him certified and distributed.

12 *U. S. Stats.* 737, 738.

Up to this point it is apparent that no change whatever in the manner of making up invoices is contemplated until the first day of July, 1863. Upon this point, the words "*from and after* are clear and emphatic. "But we now come to another part of the section (12 *U. S.* "*Stats.* 738) in which it is provided that no goods, wares "or merchandise imported into the United States from "any place or country *after* said first day of July, "eighteen hundred and sixty-three, shall be admitted to "an entry, unless the invoice presented shall *in all* "*respects* conform to the requirements hereinbefore men-"tioned," &c. So that, in one place, really the most essential part of the whole act, importers are virtually prohibited from making up their invoices in the new mode until the first of July, 1863, and, in another place, their goods arriving after that date are refused entry unless the invoices presented are so made up. Here is a

distinct repugnancy between two parts of the same section. Invoices are to be prepared in the manner directed by the act, in the country whence the importation is made, but they are not to be, or at least need not be, so prepared until "*from and after*" July 1st, 1863. And yet, if the language of the section were to be followed, goods arriving on the second of July, 1863, would be refused an entry, because the invoices presented did not match with the terms of the act. The difficulty moreover, could not be overcome, because the invoices must be signed and presented before or at the time of shipment. The innocent and unfortunate importer, therefore, would be driven either to submit to the loss of his goods, or to suffer the great delay and heavy expense involved in an application to the Secretary of the Treasury.

Can it be presumed that Congress *designed* to produce this conflict between the terms of the section? Of the conflicting parts of the section, then, which shall give way? How shall they be reconciled? Shall the date of the invoice, or the date of the importation, that is, the date of the arrival of the goods, control in the construction of the law?

The answers to these questions on various grounds must be conclusive as to the interpretation of the proviso. The court has the right, and the duty is imposed upon the court, so to frame its answers as to remove all inconsistencies, and to harmonize the laws.

The act of 1863 was passed on the third of March of that year, and the operation of that part of the first section prescribing the mode of making up the invoices was postponed until the first of July following, for the evident purpose of allowing merchants or manufacturers in places *not* beyond Cape Horn or the Cape of Good Hope, four months' time, within which to become familiar with the new law. The period fixed, as to such merchants and manufacturers, was reasonable and just.

It is evident then that, in the body of the first section, the date of the invoice was intended to determine the

question as to whether a given case would or would not fall within the law.

By strict analogy, the same construction of the proviso must be adopted; and it must be held that the time there specified applies also to the date of the invoice, whether the strict letter of the proviso justified that construction or not. But there is another view of the subject equally conclusive. We assume that it is fully shown that the first section can act only upon invoices dated after July 1st, 1863.

It will not be denied that in adopting the proviso, Congress designed to give merchants and manufacturers in places "beyond Cape Horn" a period of six months, over and above the period granted to other manufacturers and merchants, within which to learn of the existence of the law and to familiarize themselves with its provisions.

But any other construction of the proviso than that upon which we insist, would be inconsistent with the interpretation of the body of the section, would place all merchants and manufacturers practically upon a dead level in point of time, without reference to the places of their residence, and thus the proviso would become lifeless, and that principle of law, which requires effect to be given to every part of a statute, would be disregarded or overridden.

A proviso, "in deeds and laws, is a limitation or *exception* to a grant made or authority conferred."

Voorhees *vs.* Bank of the United States, 10 *Pet.* 471.

"The proviso is generally intended to restrain the "enacting clause, and to *except* something which would "otherwise have been within it, or, in some measure, to "modify the enacting clause."

Wayman *vs.* Southard, 10 *Wheat.* 30.

But it may be claimed that the port of Bordeaux is not a "place beyond Cape Horn," within the meaning of the proviso; and that to construe the proviso as applicable to such proceedings here, would cause confusion in the

administration of law by permitting two different acts to be in operation at the same time, in different parts of the United States; and that, therefore, it must be intended that, by the expression "any place beyond Cape Horn or the Cape of Good Hope," Congress meant any places beyond those points by geographical relation to the seat of Government.

The supposed difficulty may be variously answered:

1. There is nothing in the Constitution of the United States which requires laws to be uniform in their operation, and there is no principle of law with which the existence and independent operation of two acts of Congress upon the same subject, in different parts of the United States, would conflict.

2. By the very terms of the proviso, importations to San Francisco *via* Cape Horn, from any part of the world, form one of the cases which it was intended to cover.

3. It is worthy of remark, that this proviso does not necessarily fix the rate of duties to be charged, but seems to leave them where they were before. It only applies to invoices, and the condition in regard thereto, which requires a declaration to be endorsed thereon, and, of course, therefore to the statement as to the market value.

No difficulty can therefore arise to the effect that the construction we claim would make the rate of duties on goods between July and January, 1864, from the same place, if imported into the port of New-York, one rate, and if into the port of San Francisco, another rate; and that therefore the provision of the Constitution of the United States would be violated which forbids giving preferences to ports of one State over those of another. There is a simple variation in the details of an invoice, or rather in the endorsement or declaration to be put thereon.

4. It may be held in regard to this that the terms,

beyond the Cape of Good Hope, means east thereof; and that the term beyond Cape Horn, means west thereof.

In a case arising under the § 14 of the act of July 14, 1862, (Haddon *vs.* Barney, which arose in New-York, and has not been reported,) Judge Nelson did in substance so hold in respect of the Cape of Good Hope.

This ruling does not, however, seem to materially relieve some difficulties growing out of the subject, and which arise from the vast breadth of our maritime coast.

It does not decide whether the point from which east or west is to be measured, is to be Washington or the port of entry.

Besides, if these statutory phrases are to be taken as the simple equivalents of east and west from the meridian of Washington, a point on the coast of China or in Siam would be both east and west, as they are the antipodes of Washington. And if beyond Cape Horn means west of Cape Horn, then all the western coast of South America and Mexico are included, even though the shipments were made to San Francisco. Indeed, this act would not apply till January 1st to a shipment by the direct mail line from Panama or Acapulco to San Francisco.

It is submitted that the most just and practicable rule is to reckon beyond the Cape of Good Hope or Cape Horn from the port of entry.

Policy and Justice.

I am aware of the rules of construction of revenue laws which have been sanctioned by this court, and which certainly seem a departure from ordinary rules of construction, and tend far toward a theory that all such laws are to be so construed as yield the greatest amount of revenue.

Wood *vs.* The United States, 16 *Peters' R.* 343.
Taylor *vs.* The United States, 3 *How. R.* 197.
Buckley *vs.* The United States, 4 *How. R.* 251.

Ex parte Ellis, 11 *Cal. R.* 224.
Alexander *vs.* Washington, 5 *Maryland R.* 485.
United States *vs.* Fisher, 2 *Cranch R.* 385.
18 *Viner's Abridg.* 519, 526, 528.
Ryegate *vs.* Wardsboro', 30 *Vermont R.* 749.

I fully recognise the fact that no litigant will meet with more indulgence before this high tribunal than the merchants of foreign countries; and I know at the same time that no reasons but those founded in the record and the laws and policy of the nation will affect or ought to affect your decision.

While therefore it is not proper before this tribunal to depart much from the limits of purely legal discussion, it may be permissible to briefly allude to the nature of the questions before the court. For a long series of years the trade in champagne between this country and France has been conducted upon the basis of the present valuations. No objections have been made and no notice given to the importers that any attack upon them was to be made or that any dissatisfaction existed with their invoices.

Year after year there have been custom-house valuations based on the same theory of value as these invoices. The shippers have thus been led to believe that this Government did not object to these valuations, and have conducted their business with the most unsuspecting confidence.

There is every reason to believe that the invoices in question were made precisely as those for ten years previously had been, and in the exercise of most perfect good faith.

All of a sudden the custom-house officers, having sent one of their number abroad and carefully laid their plans, pounce down upon the unsuspecting importer and bring him to sudden condemnation, and impose upon him immense pecuniary losses.

For it is not these cases alone and the large amount they involve that you are now to decide, but other large claims for forfeitures in San Francisco and New-York

are depending on their issue. And there are also claims for alleged back duties of immense amount.

This case does not illustrate that theory of official action that seems fair and just to the subjects of a friendly maritime State, which is bound to the United States by so many grateful memories of her noble co-operation with us in the terrible struggle of our revolutionary birth; nor does it seem to comport with those higher and more generous principles of national intercourse, between great commercial and Christian races, which have superseded that older doctrine which treated all foreign States and subjects as quasi-enemies, and all revenue laws as occupying a domain within which courtesy, comity and justice were unrecognised and unknown.

It cannot be denied that, with no inconsiderable foundation in justice, the merchants and government of France will regard the early proceedings in this matter as characterized by much unscrupulousness and severity; and they were certainly of a character to provoke retaliations that will not tend to promote the interests of general commerce, nor those friendly feelings between the people of the two nations on which the prosperity of all profitable and honorable commerce is founded.

The motives which this proceeding charge upon the owners of these champagnes are of the most offensive character, and no such charge can ever be warranted or sustained, except upon the clearest proof. There is no such proof in the case; and the enlightened mercantile community of Europe, to whom the high and honorable character of the claimants is well known, will never accept the judgment censuring their character rendered in this suit, unless it shall have some better foundation than vague suspicion, unfriendly prepossessions and deductions from inconclusive and unauthorized testimony.

I believe that to release the property seized and to allow the proceeding thus far to operate only as a friendly admonition to the merchants of France, will enlarge the commercial dealings between the two nations, increase the revenues of this Government from foreign imports, and illustrate our appreciation of the good-will and the

generous policy that should characterize the commercial intercourse of friendly nations.

Chancellor Kent declares that the "law of nations enjoins upon every nation the punctual observances of "*benevolence and good will* as well as of justice toward "its neighbors. This is equally the *policy* and duty of "nations." 1 *Comm.* p. 32.

It becomes the United States, and well comports with her historic fame, to assume the highest grounds of justice and liberality in all her dealings with other nations. The spirit of her foreign intercourse and the tone of her executive and judicial administration should never fall below the justice and the equity in which her laws and her constitution are founded. Let no European merchant ever be able to say with justice that the administration of the laws of the United States is not in harmony with the spirit of that great national compact which is the wonder and the aspiration of Europe and the guaranty and the glory of America. If there is any nation that can afford to be and ought to be more just and lenient than any other in the administration of her revenue laws, that nation is the United States; and there never was a fitter era than the present to make that honorable preeminence manifest to the commercial world.

D. B. Eaton,
Of Counsel for the Claimants.

MEMORANDUM.

In order to pass goods through the Custom-Houses of the United States, under our revenue laws, four papers are required, to wit: Bill of Lading, Invoice, Certificate or Declaration, and Entry.

It is not necessary to consider the bill of lading.

Invoice.

Every body understands what is the definition of an invoice in general commercial law, but in our revenue law it has a peculiar meaning.

The first law of the United States which contains positive directions as to what an invoice, for custom-house purposes, shall contain, is the second section of the act of Congress of March 3, 1801. (2d vol. *Stats. at Large*, page 121.) This section provides, "that from and after the 30th day of June next, the invoice of all goods, imported into the United States, and subject to a duty *ad valorem*, shall be made out in the currency of the place or country from whence the importation shall be made, and shall contain a true statement of the actual cost of such goods in such foreign currency or currencies," &c.

The next law, touching the subject of custom-house invoices, is the 4th section of the act of Congress of March 1st, 1823. (3d *Stats. at Large*, page 730.) This section gives the form of oath to be administered to the owner of the merchandise at the port of the United States at which the importation is made. According to the

form prescribed by this law, the consignee or agent is required to swear, among other things, "that the invoice now produced by me exhibits the actual cost (if purchased) or fair market value (if otherwise obtained) at the time or times, and place or places, when and where procured, (as the case may be,) of the said goods, wares and merchandise; all the charges thereon, and no other discount, bounty or drawback but such as have been actually allowed on the same."

This oath, required to be taken on entry at the custom-house, of course, implies that the invoice is to be made up in accordance therewith.

The next legislation, on the subject of invoices, is the 17th section of the act of July 14, 1862. (12th vol. *Stat. at Large*, page 558.) The effect of this legislation is, that the invoice, (if of goods subject to *ad valorem* duty, and obtained by purchase,) shall contain the actual cost thereof, all charges thereon, and no discounts, bounties or drawbacks, except such as have been actually allowed; and when the goods are procured in any other manner than by purchase, the actual market value thereof; and if subject to specific duty, the actual quantity thereof.

It is important to observe, that this 17th section does not specify the *time* and *place* on which the actual cost or actual market value shall be predicated in the invoice; that is, whether it shall be at the time and place of purchase or manufacture, or the time and place of exportation to the United States.

The next legislation, in respect to the contents of the invoice, is the 1st section of the act of March 3, 1863. (12th vol. *Stat. at Large*, page 737.) This section enters more into detail than any preceding legislation, as to what an invoice shall contain, and it *fixes* the time and place in respect to which value shall be predicated. This act of 1863 provides that an invoice of purchased goods, subject to *ad valorem* duty, shall contain: (1.) A true and full statement of the time when, and place where, the same were purchased; (2.) The actual cost thereof; (3.) All charges thereon; (4.) No discounts, bounties or drawbacks but such as have been actually allowed; (5) If subject

to specific duty, the actual quantity; and (6.) The currency which was actually paid for the goods by the purchaser.

In respect to goods procured in any other manner than by purchase, the act of 1863 makes the invoice thereof different from the invoice of purchased goods, only in the fact that the invoice of the former, (that is, manufactured goods,) instead of giving the actual cost at the time and place of purchase, shall give the actual market value thereof at the time and place of procurement or manufacture. These three acts contain all Congressional requirements of what an invoice shall contain, for custom-house purposes.

Declaration.

The eighth section of the Tariff Act of 1818 (3d vol. *Stat. at Large*, page 435) is the first statute which gives American consuls any supervision over merchandise imported to the United States. The pertinent language of this section is as follows:

"Goods, wares and merchandise imported and subject to duty as aforesaid, and belonging to a person or persons residing, and at the time of such importations being out of the United States, shall not be admitted to entry unless the invoice thereof shall be verified before the consul of the United States. And such owner or owners shall declare, on oath, whether he or they are the manufacturers, in whole or in part, of such goods, or are concerned, directly or indirectly, in the profits of any art or trade by which they have been brought to their present state of manufacture; and if so, he or they shall further swear that the prices charged in the aforesaid invoice are the current value of the same at the place of manufacture, and such as he or they would have received if the same had been there sold in the usual course of trade."

This act, it will be seen, required the owner residing abroad to swear to the cost of the goods, if purchased, or market value, if manufactured, before a consul of the United States. Owing to the difficulty experienced,

especially in Great Britain, where objection was made by that government to allowing their subjects to be called before a foreigner and put under oath, the seventh and eighth sections of the act of March 1, 1823, (3d vol. *Stat. at Large*, page 733,) provided a relief in that respect by authorizing foreign owners to make oath before a magistrate of the country, and then carry the invoice before a consul of the United States, who is required to certify that the person taking the declaration is a magistrate, and the certificate entitled to full faith and credit.

Up to this time, it will be observed, that the only invoices to be certified were those of goods *subject to ad valorem duty*, and owned by persons *residing abroad*, and, therefore, to provide for goods subject to specific duty, the 17th section of the act of July 14, 1862, required, among other things, ALL invoices to be certified, under oath, before an American consul. It excluded the magistrate. This provision brought back the old difficulty which arose under the act of 1818. Therefore, on the 3d March, 1863, instead of requiring the owner to go before the consul to make *oath* to his invoice, nothing was required but an endorsement upon the invoice, or a declaration signed by the purchaser, manufacturer, owner or agent, setting forth that the invoice was in all respects true, &c.

Pursuant to this act instructions were issued to consuls furnishing them with forms for the declaration required. *Declarations* are now required instead of *oaths*. The forms of this declaration are provided for in circular No. 35, issued by the Department of State, April 27, 1863, forms Nos. 142 and 143. It will be observed that the declaration required by the act of 1863 must be endorsed on the invoice, when the latter is produced to the consul, and the consul then gives a certificate of the production, the name of the person producing, and the port of the United States to which the invoice was destined.

This legislation really makes the *declaration* distinct from the *certificate* of the consul, and so makes *five* papers required to pass goods through the custom-house, to wit: Bill of Lading, Invoice, Declaration, Certificate of Consul and Entry.

Entry.

On the arrival of merchandise at the port of entry, the first step to be taken, (after making entry of the arrival and manifest of the ship,) in order to pass merchandise through the custom-house, is to make the entry thereof. The 36th section of the act of March 2, 1799, is the first legislation which describes what this entry *paper* shall contain. This law says: (1.) That the entry shall be in writing; (2.) Shall be made with the collector; (3.) Shall specify the vessel and the master's name; (4.) The port from which the merchandise has been brought; (5.) The particular marks, denomination and prime cost of the merchandise; (6.) Charges of each particular package or parcel, or if in bulk, the quantity, quality and prime cost; (7.) The species of money in which the invoice was made up; and then goes on to prescribe a form for this entry, and the oath to be attached thereto. It is made, by Treasury regulations, the duty of the collector, or his clerks, to compare the entry with the invoice and the accompanying papers, and estimate thereon the amount of duty to be deposited by the person making the entry, in order to secure delivery on penal bond, when required by the collector, of such portion of the merchandise as is not sent to the appraisers' stores for examination. The importer is required, by Treasury regulations, to state on the entry what rate of duty each description of goods contained thereon pays. It will be observed that upon this entry paper are made *all computations of duty*. The *entry* is retained in the office of the collector, while the *invoice* is sent to the appraisers for their information and guidance, thus recognising in practice a distinction bebetween the two papers. (See Appendix from *Treasury Reg.*)

All of these acts of Congress, from 1799 to 1863, were passed for the protection of the revenue of the United States, and to enable custom-house officers to collect duties on imported goods in the easiest, surest and simplest manner.

At the organization of the Federal Government, the

system of government appraisers of imported goods commissioned by the President and Secretary of the Treasury was unknown.

The 49th section of the act of 1799 provided that the collector should estimate the amount of duties upon *the facts presented to him on the invoice and entry.* It was assumed that the value would be correctly stated therein. The 52d section of the same act provided that, in case the entry shall be incomplete, or without the specification of particulars, either for want of the original invoice or for any other cause, or if the merchandise shall have received damage during the voyage, then there should be an appraisement by two merchants, one to be appointed by the collector, and the other to be appointed by the importer. Thus it happens that the act of 1799, in order to secure an honest invoice, provided in the 66th section, that if any goods shall not be invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, or the value thereof, to be recovered of the person making the entry, shall be forfeited. And in the 67th section it was provided that if any goods were stated on the entry paper by a false denomination, the same should be forfeited. It was not until the act of April 20, 1818, that Congress provided for the appointment, by the President, of custom-house appraisers, and provided in that, and subsequent acts, that the value, fixed by the appraisers, should be considered the value for the purpose of estimating duty. When this system was inaugurated and fairly under way, Congress provided, in the act of 30th May, stringent legislation to secure the production of an honest invoice, the object being to inform the judgment of the appraisers by an invoice as to the value of the different kinds of merchandise constantly passing through their hands. It was as vital to the revenue to secure an honest invoice under the appraisement system as it was under the old system of assessing duty upon the invoice, for one dishonest invoice would poison the judgment of the appraisers, in

respect to many subsequent importations, and thus seriously diminish the revenue.

Not long after complete adoption of the appraisement system, Congress inaugurated legislation requiring the importer (no matter what might be the price stated in the invoice) to state on the entry paper *the actual market value of the goods*, the purpose being to provide for cases where goods were purchased at a price greatly under their real value, or where the value had increased since purchased. The law previously required the importer of purchased goods to state in his invoice the actual cost. It now permits him to add on the entry, in order to bring the invoice value up to the true market value. But, in order to compel the importer to be attentive to this last requirement, Congress provided that if the appraised value exceeded the entered value by a certain per centum, then the collector should impose an additional duty by way of punishment for the neglect. The latest legislation on this subject of additional duty, if the appraised value exceeds the entered value, will be found in the 23d section of the act of June 30, 1864. The government appraisers are now required by law to ascertain the value of imported merchandise in the principal markets of the country from which it is brought, at the period of exportation to the United States. While the invoice to be presented at the custom-house must, if the goods be purchased, state the actual cost at the time and place of procurement, and if manufactured, the actual market value at the time and place of manufacture. It will be seen, therefore, that the invoice refers to a different time and place from that upon which the appraisers must predicate the value. Thus showing that, under the existing system, the invoice is only a document required for the information and guidance of the appraisers.

This review of the legislation of the United States, made to secure prompt and safe collection of the revenue, will be found a useful guide to enable the court to reach a correct interpretation of the first section of the act of March 3, 1863.

At the time of the passage of the last named act, the

existing provisions of law were ample to secure a confiscation of merchandise entered at the custom-house upon a *false invoice*. Nothing could be broader or more effective than the language of the 4th section of the act of 1830 in respect to an invoice. It forfeits all the merchandise contained on an invoice, if the jury find that the invoice was made up with intent to evade the payment of duty legally chargeable thereon. Therefore no legislation was needed upon the subject of an invoice.

In respect, however, to a false declaration, or a false entry, the law was defective and insufficient. The 67th section of the act of 1799 was the only law which, up to March 3, 1863, forfeited the merchandise for a false statement in an entry paper, and that section only forfeited when the goods were described in an entry by a false denomination. Of course, that permitted to go unpunished a vast quantity of statements which might be made in an entry paper, calculated to mislead the entry clerks at the custom-house, and thus defraud the revenue. To provide for this omission, was one of the chief purposes of the first section of the act of 1863, and upon close inspection of the confiscation clause of the first section of the before mentioned act, it will be seen that, despite the verbiage used, the thing punished is the making of a false entry by any false or fraudulent practice or appliance whatsoever. It is false statements knowingly made in the entry paper, which the first section of the act of March 3, 1863, punishes.

Incidentally the first section inaugurates the system of triplicate invoices. It also states more in detail what shall be contained in an invoice; it describes a new form of declaration, which shall be appended to an invoice, and makes this declaration a part of the entry, so as to forfeit the goods if the declaration be false. But it does not modify the circumstance under which the merchandise can be forfeited because accompanied by a false invoice.

The whole structure of the revenue law proceeds upon the theory that honest importers are to be protected. The Government does not intend to entrap merchants by

complicated forms, or to confiscate their property, unless the merchandise is invoiced and entered with a fraudulent intent to evade the payment of duty legally chargeable thereon, and this act of 1863 has not changed the general principle. Therefore, if the Government claim that merchandise is forfeited by reason of a false invoice, then the prosecuting officer must satisfy the jury that the person who made up the invoice did it with intent to defraud; and so, if the Government alleges that merchandise is forfeited under the act of 1863 by reason of a false entry, the prosecuting officer must satisfy the jury that the person who made the entry did it knowingly. So, also, in respect to a false declaration.

This theory of our revenue system is confirmed by the legislation of June 30, 1864, section 23d, to which reference has been made. Congress there provides for cases of honest undervaluation, and the punishment is *additional duty of* 20 *per cent.* In a word, the law says, that if an importer wilfully, knowingly or fraudulently undervalues his merchandise or makes incorrect statements, either in the invoice or declaration or entry, the whole of the merchandise shall be forfeited; but if, on the other hand, the undervaluation or false statements were made by accident or mistake, without intention to defraud, then the Government, instead of taking *all* the merchandise, shall forfeit *one-fifth*, that is to say, twenty per centum. See, upon this point, United States *vs.* Sixty-seven packages, 17 *Howard*, page 85.

The settled policy of the courts of the United States has always been to consider and interpret each tariff law as a part of a system. The judges have repeatedly repelled efforts to treat the different tariff acts as independent one of another, unless there be something in the language used (as in case of burden of proof) which requires a different construction. The revenue laws are construed so as most effectually to accomplish the intents of the legislature. See Taylor *vs.* United States, 3 *Howard*, 199; Adams *vs.* Bancroft, 3 *Sumner*, 386; United States *vs.* Breed, 1 *Sumner*, 159.

234. With a view to uniformity in practice at the several custom-houses in respect to the entry of merchandise, it is deemed proper to state, in addition to the general provisions on the subject in these regulations, that the importer should be required to carry out in his entry the value of each description of goods paying a different rate of duty, under the appropriate head of 5, 10, 15, 20, 25, 30, 40 or 100 per cent., as the case may be. The clerk charged with the examination of entries will compare the classification made by the importer with the description given in the *invoice*, and see that the several articles are *entered* at the rates provided by law, it being considered that the determination of the schedule under which merchandise may be admitted to entry, devolves upon the Collector, and is a part of his proper duties. For the information of the appraisers, and to ensure the correct classification, the rates at which articles of merchandise are allowed to be entered, will in all cases be noted by the Collector against such articles on the invoice, either by figures, at five per cent., ten per cent., &c., or by the letter representing the schedule of the tariff act, under which, in his opinion, they are chargeable. This will be done at time of entry, and before the *invoice* is transmitted to the appraisers for examination. It is also required, that all additions for charges and commissions, as well as additions by importers, under the 8th section of the act of July 30, 1846, should be noted at the foot of the invoice, so that the appraisers may be informed of the precise value declared ON ENTRY.

235. The 23d section of the act of March 1st, 1823, provides, "that when any goods, wares or merchandise shall be admitted to an entry upon invoice, the Collector of the port in which the same are entered shall certify the same under his official seal." In accordance with this requirement, each and every invoice, as soon as entered, will be stamped with the date and fact of entry, and signed by

the Collector; the certificate being put upon the invoice itself, and not upon the envelope or wrapper. A careful adherence to these suggestions will, it is believed, obviate confusion, and ensure a more accurate transaction of the customs business.

236. After the examination has been made by the appraisers, and their returns stated *on the invoice*, in the manner directed in these instructions, they will return the *invoice* to the Collector, who, together with the Naval Officer, will examine their return by the original ENTRY, and if the *latter* be found correct, a special permit will be issued by the Collector for the delivery of the examined packages.

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Supreme Court of the U. S.

300 BASKETS OF CHAMPAGNE, R. FEURSTEIN,
CLAIMANT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

125 BASKETS OF CHAMPAGNE, AND 600 BASKETS OF CHAMPAGNE, EUGENE CLICQUOT,
CLAIMANT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

Points and Brief for Defendant in Error.

JAMES SPEED, *Attorney-General*, and
DELOS LAKE, *Counsel for Defendant in Error.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
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Points and Brief for Defendant in Error.

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New-York:
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1866.

Supreme Court of the United States.

300 Baskets of Champagne, marked H. G. & Co., R. Feurstein, Claimant, Plaintiff in Error,

agt.

The United States, Deft. in Error.

In Error to the Circuit Court of the United States for the Northern District of California.

Abstract of Case.

On the 20th day of April, 1864, the Collector of the Port of San Francisco seized the merchandise in question at that port, and on land, as being forfeited to the United States, according to the provisions of the first section of the statute of March 3d, 1863, (12 *Stat.*, p. .)

That statute provides that merchandise intended for entry into any port of the United States from any foreign country, *by the manufacturer*, must be invoiced, if subject to an ad valorem duty, *at its actual market value at the time and place when and where the same was manufactured.* It is alleged that the merchandise seized was invoiced much below that value by the manufacturer at Rheims, in France; the necessary declaration made and Consular certificate of value obtained; and *on the 5th of April*, 1864, was imported and entered at the custom-house in San Francisco upon said false

invoice, leaving France from the port of Bordeaux, in the ship Armand Rose Andre. (See Libel, p. 2.)

The invoice was made by Baron F. de Sachs, a member of the firm of Veuve Cliquot Pousardin, manufacturers, at Rheims, and by that firm consigned to the claimants, at San Francisco, through the agency of H. G. Schmidt, of New-York.

The cause was tried by Hon. Ogden Hoffman, District Judge, and a jury, and judgment of forfeiture rendered in the District Court in favor of the United States. The claimant took a bill of exceptions and writ of error to the Circuit Court, wherein the judgment was affirmed, and this writ of error was thereupon brought by the claimant to this court.

The general facts undenied or proved will be found in the bill of exceptions taken in the District Court. (See printed records, p. 5.)

POINTS.

1.

The objections of the claimant to the introduction by the plaintiffs of the "*price current*" produced by the witness, Farwell; (folio 17, page 6;) to that witness' evidence of the difference in the prices of the wines named, between Rheims and Paris; (folios 20 and 21;) and to the introduction of the seven letters from manufacturers at Rheims, respecting the prices of champagne wines at that place, (see folios 22 to 35,) were not valid.

These objections were precisely the same to all that evidence, to wit: that it was "*hearsay*, *irrelevant* and *immaterial*," for the reasons specifically alleged in each case.

1st. Was that evidence *hearsay* in the sense which excludes that class of proofs in the cases to which the rule applies? The answer to this question depends upon the nature of the fact to be established. Those facts were the offers to sell, sales made, and the *market value* of

the champagne wines *at Rheims*, and that market value is, *the price at which manufacturers there offer that article for sale to all the world, and at which they sell it to customers.*

To test the question on argument, let us assume that the same transaction and interview between the witness, Farwell, and the agent at Paris of the house Jeune & Co. of Rheims, had occurred in the latter city; that Farwell had gone to Rheims to purchase wines, or, if you please, to ascertain the price at that place; that he had called on the same agent and made the same inquiry; and the agent at Rheims, instead of orally replying to the interrogatory, had then delivered to the witness the same "price current," would not that document have been a legimate answer to the question, and so far as the answer could form a part of a legitimate negotiation of sale and purchase, would it not be competent direct proof *tending to establish a sale* between the parties, if one actually was made, and afterwards disputed between them? If the "price current" or the oral answer of the agent would be legitimate evidence between the principal, Jeune & Co. and the witness, in the case supposed, it cannot be regarded as "hearsay" in the case at bar. Any evidence which would be legitimate, a link in the chain of circumstances, to prove an *actual sale at Rheims* between the parties to the negotiation, would be competent to prove the same fact for the present purpose between other parties; and as far as it went, would tend legitimately to prove the market value of the wines at Rheims.

Now, can the fact that this interview occurred at Paris, (within a few miles of Rheims,) make any difference in its character as evidence? If the document related to the price at Paris, the price at Rheims must be commercially the same, with the addition of incidental expenses and commissions, which are doubtless well known, and could be determined by other proof. Our present business is with the *competency*, not the conclusiveness of the evidence. If that paper *tended to prove the price at Rheims*, and was not objectionable *as hearsay* evi-

dence, it was competent, and the claimant's allegation that it was "irrelevant and immaterial," is not sustained.

Nor is the claimant's allegation that the "price current" gave only the price per single bottle at Paris verified by that paper; it purports to give the *wholesale price at Rheims.* (See fols. 19 and 20.) Its language is: "Price at Rheims, *package* included." Single bottles are not denominated packages in commercial parlance.

It is confidently insisted on this point, that the only difference between the testimony of an actual purchase at Rheims, and that under consideration, is in its degree of conclusiveness, and not in its character; that both are admissible, *and are direct evidence.*

The same argument applies to the other evidence of the witness, Farwell, objected to, and to the letters. The latter are all dated at Rheims; they were written by manufacturers in reply to applications to purchase; and they are as competent evidence to prove the market price of the wines mentioned, at Rheims, as the oral declarations of the writers made to the applicant at Rheims would have been, and on this ground are not objectionable as hearsay evidence.

The judge, in his charge to the jury, (see folios 58 to 63,) comments on this class of evidence, and gave instructions upon its tendency and effect, which secured to the claimant all his just rights in respect to it.

On the question of the admisibility of the letters it is to be observed that the claimants gave evidence tending to show that champagne wines in the hands of the manufacturers in the champagne district of France, in a manufactured state, ready for consumption, had no fixed actual market value, and are not sold or dealt in at the place of production.

It was to rebut this evidence that the letters were introduced by the Government.

The nature of the evidence introduced by the claimants is not stated, but from the necessity of the case it could only have been of a negative character, and consisted of

statements of residents of the district, of absence of knowledge of any sales or transactions on which market values could be predicated.

If such testimony was competent to prove that there were no sales and no fixed prices, it would seem to be equally competent for the plaintiff to show, by residents or non-residents of the district, that such wines have been openly and publicly offered for sale at fixed prices, and largely dealt in for many years. And if it would be competent for a witness to testify that he had heard and seen such goods constantly offered for sale by the principal manufacturers, it would seem to be equally competent to show actual written offers by the principal manufacturers from time to time to establish the same facts.

Buckley *vs.* U. S., 4 *Howard*, 257 and 258.

2.

The judge correctly instructed the jury in reply to the claimant's first request. (See folio 35.)

The valuation set by Cliquot himself on his own wines, (those in question being his,) he being a manufacturer, residing at Rheims, is *competent* evidence of their market value at that place, even if but one such valuation should be proved; its *admissibility as tending to prove the market value, and not its effect or conclusiveness*, being the ground of objection. If Cliquot had made one hundred such valuations, or offered to sell at certain prices, the effect would, perhaps, have been one hundred times as great; but the quality or admissibility of the evidence would have been no greater.

3.

The judge correctly charged upon the second request of the claimant's counsel. (See folio 36.)

This request, like the first just stated, respects the *relevancy* of the testimony given on the point of market value at Rheims. If the wines of Veuve Cliquot had a

market value at Paris, the same value at the place of manufacture could be ascertained with absolute certainty by evidence of the expenses incident to its transportation from the latter point to Paris. This request is formed on the singular hypothesis that the wines in question can have no market value except at the place of manufacture—a manifestly fallacious proposition. Especially is such evidence *competent* in proof of "*probable cause*," which is the extent of the certainty required on the part of the United States to cast the *onus probandi* on the claimants. (See subsequent point.)

4.

The judge properly declined to charge the jury in accordance with the third request of the claimant's counsel. (Fol. 37.)

This request assumes what the act of 1863 does not declare, viz.: that the punishment inflicted by it, is for "an attempt to defraud the revenue or evade the duties;" whereas the act delares that forfeiture of the goods shall follow *the entry of them* at any port of the United States, *on a false ad valorem invoice knowingly made.* A false invoice knowingly made by the owner, followed by entry, completes the offence, be his motive or object what it may. *A fraudulent design* is not made by the act the *gravamen* of the offence. (See the judge's charge on this point at folios 66, 67 and 68.)

5.

The fourth request of the counsel for the claimant was correctly refused. (See folio 38.)

The point of this request appears to be that the act of 1863 did not reach this shipment of wines, because the invoice, declaration and certificate were made and obtained and the cargo shipped from Bordeaux, (France,) *before* the first day of January, 1864; that statute, by its own provisions, not going into effect in respect to merchandise coming into the United States from places be-

yond Cape Horn, prior to that date; and that Bordeaux is, in respect to San Francisco, where the entry was made, a place beyond Cape Horn.

The *entry* at the port of San Francisco was not made until the 5th day of April, 1864, and the forfeiture attaches *only* when that act is consummated at San Francisco, by means of a false invoice, knowingly made previously for that purpose. The act does not in any of its provisions assume to operate upon the INVOICE itself, made in a foreign country, so long as it is not used within the jurisdiction of the United States, however false or fraudulent it may be. (See Sec. 1st, Act of 1863.)

When the invoice was used at the port of San Francisco, that act was in full force (April 5th, 1864) against the merchandise, and if *then* used by the consignees, the agents of the manufacturers who made and forwarded the same for that purpose, the penalty attached; for those consignees were chargeable with a knowledge of the law as it existed *when they made the entry*, no matter what it may have been when the invoice was made in France. That invoice, the declaration and consular certificate, are but a part of *an entire transaction;* the penalty does not attach until the entry is made to complete the offence. If before that is done, such entry, on a false invoice, is forbidden, any further proceeding towards its accomplishment must be abandoned.

(See *Statutes at Large*, vol. 12, page 737, for Act of 1863, sec. 1st.)

6.

The district judge correctly refused to charge the jury, as matter of law, in accordance with the fifth request of the counsel for the claimants. (Folio 39.)

(See the charge of the judge at folios 53 to 57.)

By the provisions of the act of April 20, 1818, re-enacted by the act of March 1st, 1823, the importer was required to invoice such goods "at the current value of the same at the place of manufacture, *and at*

such prices as he would have received if the same had been there sold in the usual course of trade." (Sec. 8.)

The counsel's proposition assumes that the goods may have had *no market value at Rheims* when the invoice was made; and if they had none, he submits that they might be legally invoiced *at cost* to the manufacturer. Now, sales made of any manufactured merchandise, "*in the usual course of trade*," establish the market value at the place of such sales; *and if there are no sales*, and consequently no selling price or market value at the place of manufacture, by what rule of construction can an invoice, at the actual cost to the manufacturer, be justified, under a statute which requires the valuation to be made at *the selling price?* The cost to the manufacturer is not an element which, in the least, affects the question of valuation for the purpose of importation into the United States, and he might, with equal propriety, have adopted the cost of the raw material, before he had bestowed his labor upon it in the process of manufacture.

The same arguments and reasoning apply to this point when considered in reference to the statute of 1863, which merely adopts other words in respect to the standard of valuation, to convey the same meaning as that used in the act of 1818.

American State Papers, vol. 9, p. 234, folio ed.
Report of Secretary of Treasury.
3 *Statutes at Large*, 435.
Secs. 5 and 8 *Act of* 1818.
do. pp. 732 and 733, secs. 5 and 8.
Statute of 1823.
U. S. *vs.* Certain Packages, &c., *Gilpin's Rep.* p. 1244.

7.

The judge properly refused to instruct the jury in accordance with the sixth request of the counsel for the claimant, (see folio 40,) and he correctly instructed them on that point. (See folios 66, 67 and 68.)

The act of 1863 has adopted the word "*knowingly*" as its definition, *in fact*, of the *gravamen* of the offence. (See sec. 1st.) The language is, "if the consignee or owner shall knowingly make an entry by means of any false invoice," &c.

Whether it is possible for a false entry to be knowingly made without involving the characteristic of fraudulent intent, is wholly immaterial with respect to the consummation of the offence. The facts of knowledge and entry complete the crime.

8.

The District Judge correctly refused to charge the jury in accordance with the seventh and eighth requests of the counsel for the claimant. (See folios 41, 42, 43.)

If the owners at Rheims made the false invoice knowingly, with the intent that their wines should be entered at San Francisco upon that invoice, and if Feurstein & Co., at that city, made the entry, as agents of the owners, the fact of the knowledge of those agents in respect to the false valuation of the wines, is wholly immaterial—"*qui facit per alium, facit per se.*" By the terms of the act of 1863, the merchandise would be forfeited, whether the owners caused the entry to be *knowingly* made on a false valuation, by an agent ignorant of that fact, or the agent at San Francisco *knowingly* made the entry on the same invoice, the owners being ignorant of the under valuation. The act includes in its terms, the entry either by the owner, or consignee, or agent, with knowledge of the false valuation; and the number of intermediate agents does not affect this question.

9.

The judge properly declined to instruct the jury according to the ninth request of the counsel for the claimant, (folio 44,) and correctly instructed them on that point. (Folios, 68, 69.)

The rule of evidence created by the act of Congress,

passed March 2d, 1799, is still in full force. Neither the act of 1818, or 1823, or 1863, or any other act has repealed or modified that provision of the first named act.

A statute is not repealed by a subsequent enactment on the same subject, unless the two are in conflict, and in that case, only in those particulars in which they are in conflict. But they are not in conflict on this question of evidence.

The 70th and 71st sections of the act of 1799 must be construed together. So construed, the words, "where any seizure shall be made *pursuant to this act*," contained in the 71st section, are enlarged in signification by the words, "any other act which is now, or *may hereafter be* enacted, contained in the 70th section," so as to embrace "any other actions, suits or informations, to be brought," by virtue of any subsequent law on the same subject, passed by Congress, and they consequently apply to actions brought under the law of 1863. By the 70th section, it is made the duty of officers to make seizures by virtue of *any act* "that then was *or thereafter may be* enacted;" and by the 71st section it is declared, that "in actions," &c., "where any seizure shall be made pursuant *to this act*, (not *this section*,) &c., the *onus probandi* shall lie upon such claimant," after "probable cause has been shown for the prosecution." Construing those two sections together, therefore, as one enactment, and giving effect to all of their provisions, the rule of evidence mentioned applies to actions for seizures brought under any subsequent act since 1799.

Again, the act of 1818 is an "act *supplementary* to the act of 1799, and the 25th section of the act of 1818 expressly provides that "all penalties and forfeitures shall be sued for, recovered, &c., in the manner prescribed in the act of 1799. (See 3d *Statutes at Large*, page 438.)

The act of March 1st, 1823, entitled "an *act supplementary to, and to amend*" the act of 1799, repeals the act of 1818, but re-enacts the provisions contained in the 5th and 8th sections of the latter named act, which are the same in substance as the provisions of the act of 1863, under which the present action is brought.

The act of 1823 also, in the 35th section, re-enacts the provision contained in the act of 1818, that all penalties and forfeitures incurred shall be sued for, recovered, &c., in the manner prescribed in the act of 1799. (See 3d *Statutes at Large*, page 739.)

And the act of March 3d, 1863, section 1st, declares the intention of that act to be only a modification of the act of 1823, and not to be a repeal of it.

From the preceding collation and analysis of the several acts relating to the public revenue, which have been passed since the enactment in 1799, it is clear that in all cases of seizures, the modes of proceeding, *embracing the rule of evidence*, prescribed in the act of 1799, have been preserved and are now in force.

Wood *vs.* United States, 16 *Peters' Rep.* 342, 351 and 366.
Clifton *vs.* United States, 4 do. 343, 347.
Taylor *vs.* United States, 3 *Howard*, 197, 211.
Same Case, *Crabb's Rep.* p. 393.
Buckley *vs.* United States, 4 *Howard*, 258.

10.

The questions raised by the tenth and eleventh requests of the claimant's counsel have been sufficiently noticed under several of the preceding points, to which the court is respectfully referred, and particularly to the fourth and seventh points.

JAMES SPEED,
Attorney-General.

and DELOS LAKE,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 320.

125 BASKETS OF CHAMPAGNE MARKED V. C., and 600 BASKETS OF CHAMPAGNE MARKED E. C., EUGENE CLICQUOT, claimant, *Plaintiffs in Error*,
against
THE UNITED STATES.

In Error to the Circuit Court of the United States for the Northern District of California.

In this case, the facts and evidence are the same as those in the preceding case, excepting the name of the claimant, and his agents at San Francisco, the number of baskets of champagne, and the absence of letters from other manufacturers. The same objections to the admissibility of evidence, the same requests by counsel for the claimant, for instructions by the judge to the jury, the same refusals and instructions, and the same charge exist in this case as in the preceding. In consequence of this identity of characteristics, the preceding points are adopted for the argument of the same questions in this case.

JAMES SPEED,
Attorney-General,
and DELOS LAKE,
Counsel for Defendant in Error.